

INITIAL STATEMENT OF REASONS

- a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 80001(c)(6)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index.”

Factual Basis:

This section is necessary to place this definition into regulation because existing regulations state that all license applicants, employees and adults associated with a licensed facility must submit a Child Abuse Central Index form so that the Department may conduct a search of the Child Abuse Central Index. This definition is taken from the definition of the Child Abuse Central Index within the California Department of Justice produced brochure, dated 2000, about the Child Protection Program.

Section 80001(c)(7)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index clearance.”

Factual Basis:

This adoption is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility that cares for children depends upon whether the individual has a “Child Abuse Central Index clearance.” In addition, clients or persons who are placing clients in facilities that care for children and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand what a clearance means when a “Child Abuse Central Index clearance” is issued.

Sections 80001(c)(8) through (17) [Renumbered from Sections 80001(c)(6) through (15)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80001(c)(6) through (15).

Factual Basis:

Sections 80001(c)(6) through (15) are renumbered to Sections 80001(c)(8) through (17) for consistency of format with the adoption of new Sections 80001(c)(6) and (7).

Section 80001(c)(18) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Section 80001(c)(19)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether they have a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a California Department of Justice (DOJ) and a Federal Bureau of Investigation (FBI) clearance.

Section 80001(d)(6)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 80001(c)(19) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must

have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Sections 80001(d)(7) through (9) [Renumbered from Sections 80001(d)(6) through (8)]

Specific Purpose:

The specific purpose of these sections is to renumber Sections 80001(d)(6) through (8).

Factual Basis:

Sections 80001(d)(6) through (8) are renumbered to Sections 80001(d)(7) through (9) for consistency of format with the adoption of new Section 80001(d)(6).

Section 80001(f)(1)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 80001(c)(19) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 80001(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 80019(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 80001(m)(2) [Renumbered from Section 80001(m)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80001(m)(1).

Factual Basis:

Section 80001(m)(1) is renumbered to Section 80001(m)(2) for consistency of format with the adoption of new Section 80001(m)(1).

Section 80001(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. Therefore, it is important to provide a definition for those who may be affected.

Sections 80001(r)(2) and (3) [Renumbered from Sections 80001(r)(1) and (2)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80001(r)(1) and (2).

Factual Basis:

Sections 80001(r)(1) and (2) are renumbered to Sections 80001(r)(2) and (3) for consistency of format with the adoption of new Section 80001(r)(1).

Section 80001(s)(2)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual's rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Sections 80001(s)(3) through (8) [Renumbered from Sections 80001(s)(2) through (7)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80001(s)(2) through (7).

Factual Basis:

Sections 80001(s)(2) through (7) are renumbered to Sections 80001(s)(3) through (8) for consistency of format with the adoption of new Section 80001(s)(2).

Sections 80019(a)(2)(D)1. and 2. (Handbook)

Specific Purpose:

The specific purpose of this amendment is to repeal the volunteer fingerprint exemption criteria from handbook.

Factual Basis:

These sections are repealed because this volunteer exemption language was amended by Senate Bill (SB) 1992, Chapter 819, Statutes of 2000.

Section 80019(b)(6) et seq.

Specific Purpose:

The purpose of this amendment is to repeal the volunteer fingerprint exemption criteria.

Factual Basis:

These sections are repealed because they were placed into this regulation affecting all community care facilities in error. The volunteer exemption criteria is specified in Health and Safety Code Section 1522(b)(4)(B) which affects adult day care and adult day support centers only and does not apply to any other community care facility category. This volunteer exemption language is now correctly being placed in proposed Section 80019(b)(7)(D).

Section 80019(b)(6) [Renumbered from Section 80019(b)(7)]

Specific Purpose:

The purpose of this amendment is to renumber Section 80019(b)(7) as Section 80019(b)(6).

Factual Basis:

This amendment to renumber is necessary for consistency of format with the repeal of existing Section 80019(b)(6).

Section 80019(b)(7) [Renumbered from Section 80019(b)(8)] and New Section 80019(b)(7)(D) et seq.

Specific Purpose:

Section 80019(b)(8) is being renumbered to Section 80019(b)(7) and Section 80019(b)(7)(D) et seq. is being added. The purpose of the adoption of Section 80019(b)(7)(D) et seq. is to add volunteers and specific qualifying criteria to the list of individuals, employed at adult day care and adult day support centers, who are exempt from submitting fingerprints.

Factual Basis:

The language proposed in Section 80019(b)(7)(D) et seq. was repealed from proposed Section 80019(b)(6) above and adopted in proposed Section 80019(b)(7)(D) et seq. This amendment is necessary because these sections were placed into existing Section 80019(b)(6) et seq., affecting all community care facilities, in error. These volunteer exemptions apply to adult day care and adult day support centers only. Also, Section 80019(b)(8) is being renumbered to Section 80019(b)(7) for consistency of format with the repeal of existing Section 80019(b)(6).

Sections 80019(b)(8) and (9) [Renumbered from Sections 80019(b)(9) and (10)]

Specific Purpose:

The purpose of this amendment is to renumber Sections 80019(b)(9) and (10) as Sections 80019(b)(8) and (9).

Factual Basis:

This amendment to renumber is necessary for consistency of format with the repeal of existing Section 80019(b)(6).

Section 80019(d)

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 80019(e) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 80019(d)(1) et seq. (New)

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

These sections were previously in Section 80065(i). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal

Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Section 80019(d)(2)[Renumbered from Section 80019(d)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019(d)(1).

Factual Basis:

Section 80019(d)(1) is renumbered to Section 80019(d)(2) for consistency of format with addition of a new Section 80019(d)(1) [previously Section 80065(i)].

Section 80019(d)(2)(B) et seq. [Renumbered from Section 80019(d)(1)(B) et seq.] (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 80019(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 80019(d)(2) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 80019(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 80019(d)(2)(B) and (d)(2)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis

These sections are necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Section 80019(e) et seq.

Specific Purpose:

The specific purpose of this amendment is to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin

working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Section 80019(f) et seq.

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to amend the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add new LIC 508D; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02, the LIC 508, Criminal Record Statement, Rev.1/03, and the LIC 508D, Criminal Record Statement for Foster Family Homes, Small Family Homes and Certified Family Homes, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Sections 80019(g) and (g)(1)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 80019(e) will result in an immediate and continued civil penalty.

Factual Basis:

This adoption is necessary because although Section 80054 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 80019(h)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 80019(e) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Section 80019(i)(3) [Renumbered from Section 80019(g)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019(g) to Section 80019(i), to delete the word prospective and to make grammatical changes. Also, Section 80019(g) et seq. are renumbered to Section 80019(i) et seq.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 80019(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 80019(g) is renumbered to Section 80019(i) for consistency of format.

Sections 80019(j) through (k) [Renumbered from Sections 80019(h) through (j)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80019(h) through (j) to Sections 80019(j) through (k).

Factual Basis

Sections 80019(h) through (j) are renumbered to Sections 80019(j) through (k) for consistency of format.

Section 80019(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1522(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a Temporary Suspension Order (TSO) or immediate exclusion action.

Section 80019(l)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Section 80019(m)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement in proposed Section 80019(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Section 80019(m)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement in proposed Section 80019(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then supply the Department additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Sections 80019.1(a) and (a)(1) through (5)

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in this subsection. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. This section is necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 80019.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive and immediate confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 80019.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual's name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 80019.1(c) [Renumbered from Section 80019.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019.1(a) to Section 80019.1(c) and to delete the phrase "from Section 80019(b) or Section 80019(c)(2).

Factual Basis:

This amendment is necessary to renumber Section 80019.1(a) to (c) for consistency of format with the addition of new Sections 80019.1(a) and (b) and to repeal out-of-date cross-references for clarity and consistency.

Sections 80019.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption .

Factual Basis:

These sections are necessary as a precursor to existing Section 80019.1(c), now renumbered to Section 80019.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written

request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Sections 80019.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within thirty (30) days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Sections 80019.1(e) and (e)(1) [Renumbered from Sections 80019.1(b) and (b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019.1(b) to Section 80019.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

These sections are necessary for consistency of format and clarity. Renumbering Section 80019.1(b) to Section 80019.1(e) is necessary with the addition of new Sections 80019.1(a), (b), and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 80019.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 80019.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03 and to add the LIC 508D (Rev. 1/03).

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied. The adoption of the LIC 508D is necessary as this form is the appropriate form pertaining to Foster Family Homes, Small Family Homes and Certified Family Homes.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03 and the LIC 508D, Criminal Record Statement for Foster Family Homes, Small Family Homes and Certified Family Homes, Rev.1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Existing Handbook Sections 80019.1(b)(9)(A) and (B) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the handbook sections that reference non-exemptible crimes in Health and Safety Code Section 1522(g) and Penal Code Section 667.5(c).

Factual Basis:

This amendment is necessary because these handbook sections are outdated, incomplete and confusing because it is difficult to decipher which specific crimes are non-exemptible. A comprehensive list with specific crime names is included in the new Handbook Sections 80019.1(m)(1) through (52).

Section 80019.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding these sections makes it clear to the affected individual that factors are considered.

Sections 80019.1(g) through (i) [Renumbered from Sections 80019.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 80019.1(c) through (e).

Factual Basis:

Sections 80019.1(c) through (e) are renumbered to Sections 80019.1(g) through (i) for consistency of format with the adoption of new Sections 80019.1(a), (b), (d), and (f).

Existing Section 80019.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 80019.1(f) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 80019.1(r).

Existing Section 80019.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 80019.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 80019.1(t).

Section 80019.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 80019.1(b)(8), now renumbered to Section 80019.1(e)(8), includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements

supported by the individual's criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

New Section 80019.1(j)(2)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 80019.1(j)(2)(A)

Specific Purpose:

The specific purpose of this section is to state that if an individual did not receive formal probation, the Department may consider granting a criminal record exemption.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and may consider granting a criminal record exemption.

Section 80019.1(j)(2)(B)

Specific Purpose:

The specific purpose of this section is to state that the requirements of Section 80019.1(j)(2) do not apply to certified Family Homes.

Factual Basis:

This section is necessary to allow individuals associated with Certified Family Homes to obtain an exemption while he/she is currently on probation or parole. Individuals who are certified Foster Family Agencies, who provide oversight of these individuals, may be considered for an exemption if they are still on probation or parole.

Section 80019.1(k)

Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to specify for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1522(g) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 80019.1(e) (Renumbered from Section 80019.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required since the last period of probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

Section 80019.1(k)(1)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or

probation before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 80019.1(k)(2)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on

their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 80019.1(k)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 80019.1(k)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 80019.1(k)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 80019.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Section 80019.1(k)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in 80019.1(k)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 80019.1(l)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the criteria specified in Sections 80019.1(k)(1) through (6) is rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 80019.1(m) and Handbook Sections 80019.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 80019.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1522(g)(1) will not be granted a criminal record exemption. Also, handbook is being added.

Factual Basis:

Section 80019.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1522(g)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This nonexemptible crimes list, previously located in Handbook Sections 80019.1(b)(9)(A) and (B), has been updated to reflect current statute. Handbook Sections 80019.1(m)(1) through (52) are added to provide the list of crimes referenced in Section 80019.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 80019.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 80019.1(n)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a simplified exemption.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1522(c)(4) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual's history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 80019.1(d) through (l).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 80019.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual's criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 80019.1(o) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 80019.1(n)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 80019.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 80019.1(p) et seq. [Renumbered from Section 80019.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80019.1(h), to make grammatical changes and to delete the word "prospective".

Factual Basis:

Section 80019.1(h) is renumbered to Section 80019.1(p) for consistency of format with the restructuring of Section 80019.1. Grammatical changes are made for clarity.

Deletion of “prospective” is necessary because with the new requirement of clearance or exemption prior to an individual’s employment [Section 80019(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility.

Section 80019.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1558 and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 80019.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual’s subsequent exemption request coincides with the exclusion limit set forth in Section 80019.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 80019.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 80019.1(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Section 80019.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 80019.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications proposed for clarity, were previously at Section 80019.1(f) et seq., with the exception of new Section 87019.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02; the LIC 508, Criminal Record Statement, Rev. 1/03; and LIC 508D, Criminal Record Statement for Foster Family Homes, Small Family Homes, and Certified Family Homes, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 80019.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current laws and regulations before a transfer is considered.

Section 80019.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the individual and the licensee, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 80019.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 80019.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 80019.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the

instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 80019.1(w) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Section 80019.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1550) or exclusion action process (Health and Safety Code Section 1558) will provide the individual with a hearing to contest the Department's action.

Section 80019.2(b)(1)

Specific Purpose:

The purpose of these amendments to add clarifying language and to delete the phrase "prior to the individual's employment, residence or initial presence in the facility".

Factual Basis:

The clarifying language is necessary so it cannot be assumed that the Child Abuse Central Index check is a fingerprint based check and to clarify that the Child Abuse Central Index check and fingerprints must be submitted at the same time.

Sections 80054(b), (b) (1), and (b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a criminal record clearance or exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment, residence or initial presence in the facility [80019(e)], this section must be amended to coincide with that requirement.

Section 80054(b)(2) [Renumbered from Section 80054(b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 80054(b)(1) to 80054(b)(2).

Factual Basis:

This amendment is necessary for consistency of format.

Section 80061(c)(3)(B)

Specific Purpose:

The specific purpose of this amendment is to delete the word "cards" and to correct a cross-reference.

Factual Basis:

This amendment is necessary because fingerprint cards are not the only method used to submit fingerprints. The Department recommends an electronic method of submitting fingerprint images.

Section 80065(i) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or a criminal record exemption prior to an individual's employment [Section 80019(e)], this section must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Sections 80065(i)(1) and (2)], that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 80019(d)(1).

Section 80066(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term "employment application forms" with the term "personnel records," add licensee and administrator to those whose records must be maintained on and delete "available to the licensing agency for review" from this location.

Factual Basis:

This amendment is necessary for clarity. "Personnel records" is a more appropriate term as items in Sections 80066(a)(1) through (12) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in Section 80066(d).

Section 80066(a)(10) [Renumbered from Section 80066(b)]

Specific Purpose:

The specific purpose of this amendment is to delete qualifying information as to who must submit a health screening, delete requirement of a health statement for volunteers from this location and to renumber Section 80066(b).

Factual Basis:

With the proposed amendments in Section 80066(a), a health screening can now be a subsection of Section 80066(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new Section 80066(b). Existing Section 80066(b) is renumbered to Section 80066(a)(10) to make the health screening a subsection of Section 80066(a).

Section 80066(a)(11)

Specific Purpose:

The specific purpose of this section is to add tuberculosis test documents to the list of personnel records that must be maintained on the licensee, administrator and all employees.

Factual Basis:

Tuberculosis test documents must be listed separately for clarity and emphasis. Tuberculosis tests are usually performed separate from a health screening. The health screening form provided by the Department includes limited space for a positive or negative tine test. Complete tuberculosis test documents could include results of a chest x-ray and/or other follow-up reports.

Section 80066(a)(12) et seq.

Specific Purpose:

The specific purpose of these sections is to add a signed criminal record statement and documentation of a criminal record clearance or exemption to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

These sections are necessary for clarity. Section 80019(d) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. These sections only clarify where that statement must be maintained. In addition, Section 80019(i) requires that this documentation be kept in the individual's personnel file. These sections repeat that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Section 80066(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All the documents listed in this section are required by other sections. These sections repeat those requirements so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Section 80066(d)

Specific Purpose:

The specific purpose of this section is to add the word "personnel" and to include the phrase "shall be available to the licensing agency for review" that is repealed in proposed Section 80066(a) above.

Factual Basis:

This section is necessary for clarity and consistency. "Personnel records" is a more descriptive term that is used throughout this section. The phrase "shall be available to the licensing agency for review" that is repealed in proposed Section 80066(a) above, is added to the existing language as it logically follows that personnel records at the facility should be available to the licensing agency.

Section 87101(c)(15) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term "conviction."

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations inform potential licensees and staff persons of actions that the Department is required to take if the Department learns that an individual has been "convicted" of a crime.

Section 87101(c)(16) [Renumbered from Section 87101(c)(15)]

Specific Purpose/Factual Basis:

Section 87101(c)(15) is being renumbered to Section 87101(c)(16) for consistency of format with the adoption of Section 87101(c)(15).

Section 87101(c)(17)

Specific Purpose:

The specific purpose of this regulation is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether they have a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Section 87101(d)(6)

Specific Purpose:

The specific purpose of this regulation is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87101(c)(17) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Sections 87101(d)(7) through (10) [Renumbered from Sections 87101(d)(6) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87101(d)(6) through (9).

Factual Basis:

Sections 87101(d)(6) through (9) are renumbered to Sections 87101(d)(7) through (10) for consistency of format with the adoption of new Section 87101(d)(6).

Section 87101(f)(2)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87101(c)(17) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 87101(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because a medical professional, under certain conditions, is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 87101(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals, without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. Therefore, it is important to provide a definition for those who may be affected.

Sections 87101(r)(2) through (7) [Renumbered from Sections 87101(r)(1) through (6)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87101(r)(1) through (6).

Factual Basis:

Sections 87101(r)(1) through (6) are renumbered to Sections 87101(r)(2) through (7) for consistency of format with the adoption of new Section 87101(r)(1).

Section 87101(s)(3)

Specific Purpose/Factual Basis:

This section is amended to make an editorial correction for consistency and clarity.

Section 87101(s)(4)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual’s rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Sections 87101(s)(5) through (10) [Renumbered from Sections 87101(s)(4) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87101(s)(4) through (9).

Factual Basis:

Sections 87101(s)(4) through (9) are renumbered to Sections 87101(s)(5) through (10) for consistency of format with the adoption of new Section 87101(s)(4).

Section 87219(b)

Specific Purpose:

The specific purpose of this amendment is to delete "California."

Factual Basis:

This amendment is necessary because both an FBI clearance and a California, or Department of Justice clearance is required prior to licensure. Section 80001(c)(19) defines criminal record clearance as both an FBI and a Department of Justice clearance.

Existing Handbook Sections 87219(b)(3)(A) through (G) (Repealed)

New Handbook Sections 87219(b)(3)(A) through (H)

Specific Purpose:

The specific purpose of this amendment is to replace existing fingerprint exempt requirements with current exemptions.

Factual Basis:

This amendment is necessary so that the section is consistent in wording and order with other like regulation sections. Recent statutory changes (SB 1992, Chapter 819, Statutes of 2000) affecting other facility types created clearer and more extensive fingerprint exempt situations. Existing fingerprint exemptions are reworded for clarity and thoroughness and placed in an order consistent with other like sections.

Handbook Section 87219(b)(3)(I) [Renumbered from Handbook Section 87219(b)(3)(H)]

Specific Purpose:

The specific purpose of this amendment is to renumber Handbook Section 87219(b)(3)(H).

Factual Basis:

Handbook Section 87219(b)(3)(H) is renumbered to Section 87219(b)(3)(I) for consistency of format with the restructuring of Section 87219.

Section 87219(c) et seq.

Specific Purpose/Factual Basis:

These sections are restructured and amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase

"to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87219(d)

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 87219(e) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her

exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev. 1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87219(d)(1) et seq.

Specific Purpose:

The specific purpose of this section is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

This section was previously in Section 87565(f). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Section 87219(d)(2) and (3) [Renumbered from Section 87219(d)(1) and (2)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219(d)(1) and (2) and to correct a cross-reference.

Factual Basis:

Section 87219(d)(1) and (2) are renumbered to Section 87219(d)(2) and (3) and cross-references are corrected for consistency of format with the proposed restructuring of Section 87219.

Section 87219(d)(3)(B) [Renumbered from Section 87219(d)(2)(B) (Repealed)]

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 87219(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 87219(d)(3)(B) and (d)(3)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis

This section is necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Existing Section 87219(d)(3) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 87219(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 87219(e) et seq.

Specific Purpose:

The specific purpose of this amendment is to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Sections 87219(f) and (f)(1)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of Section 87219(e) will result in an immediate and continued civil penalty.

Factual Basis:

This amendment is necessary because although Section 87454 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 87219(g)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of Section 80019(e) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Section 87219(h)(3) [Renumbered from Section 87219(f)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber 87219(f) to 87219(h), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87219(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 87219(f) is renumbered to 87219(h) for consistency of format.

Sections 87219(i) through (k) [Renumbered from Sections 87219(g) through (i)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87219(g) through (i) to Sections 87219(i) through (k).

Factual Basis

Sections 87219(g) through (i) are renumbered to Sections 87219(i) through (k) for consistency of format.

Section 87219(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1569.17(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Section 87219(l)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Section 87219(m)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement in proposed Section 87219(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Section 87219(m)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement in proposed Section 87219(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department with additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the arrest, obtaining the information would be useless.

Section 87219.1(a) et seq.

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in this subsection. The Department also must order the

removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 87219.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive and immediate confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 87219.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual’s name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations

or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87219.1(c) [Renumbered from Section 87219.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219.1(a) to Section 87219.1(c), to delete the qualifying phrase “except for the crimes specified in Health and Safety Code Section 1569.17(e),” and to delete outdated cross-references.

Factual Basis:

This amendment is necessary for consistency of format and clarity. Renumbering Section 87219.1(a) to (c) is necessary with the addition of new Sections 87219.1(a) and (b). Existing language construction is awkward and misleading. With the new Section 87219.1(n), it is clear that an criminal record exemption will not be granted if the individual is convicted of specific, listed crimes.

Sections 87219.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption .

Factual Basis:

These sections are necessary as a precursor to existing Section 87219.1(c), now renumbered to Section 87219.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual’s personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual’s rehabilitation.

Sections 87219.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Sections 87219.1(e) and (e)(1) [Renumbered from Sections 87219.1(b) and (b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219.1(b) to 87219.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

This section is necessary for consistency of format and clarity. Renumbering Section 87219.1(b) to 87219.1(e) is necessary with the addition of new Sections 87219.1(a), (b), and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 87219.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87219.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508, Criminal Record Statement, was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev. 1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87219.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Sections 87219.1(g) through (i) [Renumbered from Section 87219.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87219.1(c) through (e).

Factual Basis:

Sections 87219.1(c) through (e) are renumbered to Sections 87219.1(g) through (i) for consistency of format with the adoption of new Sections 87219.1 (a), (b), (d), and (f).

Existing Section 87219.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87219.1(f) et seq. from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 87219.1(r).

Existing Section 87219.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87219.1(g) from this location.

Factual Basis:

This language in this section, with slight modifications, can be found in the proposed new Section 87219.1(t).

Sections 87219.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 87219.1(b)(8), now renumbered to Section 87219.1(e)(8), includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Sections 87219.1(j)(2) and (j)(2)(A)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally

considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 87219.1(k)

Specific Purpose:

The specific purpose of this section is to introduce the following six subsections that list specific crime conviction categories and years since the last conviction that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to provide for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1569.17(g) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 87219.1(e) (Renumbered from Section 87219.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required without a subsequent conviction before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

Section 87219.1(k)(1)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation is part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and non-criminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and non-criminal activity on their own for at least one year without it being required for compliance with their probation terms and without the supervision of a probation officer.

Requiring one year beyond incarceration, probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year without a subsequent conviction is minimal and vital. If an individual can demonstrate one year since incarceration or the end of probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87219.1(k)(2)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or

parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87219.1(k)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has

been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87219.1(k)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 87219.1(k)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87219.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Section 87219.1(k)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 87219.1(k)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 87219.1(l)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the requirements specified in Sections 87219.1(k)(1) through (6) is rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 87219.1(m) and Handbook Sections 87219.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 87219.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1569.17(f)(1) will not be granted a criminal record exemption. Also, handbook is being added.

Factual Basis:

Section 87219.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1569.17(f)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. Handbook Sections 87219.1(m)(1) through (52) are added to provide the Health and Safety Code referenced in Section 87219.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 87219.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 87219.1(n)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.”

Factual Basis:

This regulation is necessary to implement Health and Safety Code Section 1569.17(c)(4) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 87219.1(d) through (l).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 87219.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual’s criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 87219.1(o) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual’s criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 87219.1(n)(2) through (4)

Specific Purpose:

The purpose of this section is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 87219.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 87219.1(p) et seq. [Renumbered from Section 87219.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87219.1(h), to make grammatical changes and to delete the word "prospective".

Factual Basis:

Section 87219.1(h) is renumbered to Section 87219.1(p) for consistency of format with the restructuring of Section 87219.1. In addition, grammatical changes are made for clarity.

Deletion of "prospective" is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87219(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility.

Existing Handbook Section 87219.1(i) et seq.

Specific Purpose:

The specific purpose of this amendment is to repeal Handbook Section 87219.1(i) et seq. that references non-exemptible crimes in Health and Safety Code Section 1569.17(f) and Penal Code Section 667.5(c).

Factual Basis:

This amendment is necessary because this handbook is outdated, incomplete and confusing because it is difficult to decipher which specific crimes are non-exemptible. A comprehensive list with specific crime names is included in the new Handbook Sections 87219.1(m)(1) through (52).

Section 87219.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1569.58(h) and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 87219.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides

with the exclusion limit set forth in Section 87219.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 87219.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 87219.1(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Section 87219.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 87219.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 87219.1(f) et seq., with the exception of new Section 87219.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87219.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current laws and regulations before a transfer is considered.

Section 87219.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 87219.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 87219.1(u) et seq.

Specific Purpose:

The specific purpose of this section is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 87219.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 87219.1(w) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Section 87219.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1550) or exclusion action process (Health and Safety Code Section 1558) will provide the individual with a hearing to contest the Department's action.

Section 87454(b) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a Department of Justice clearance or a criminal record exemption prior to their employment, residence or initial presence in the facility. Also, Section 87454(b)(1) is renumbered to Section 87454(b)(2).

Factual Basis:

This amendment is necessary because with the new requirement of Department of Justice clearance or a criminal record exemption prior to an individual's employment, residence or initial presence in the facility [Section 87219(e)], these sections must be amended to coincide with that requirement. Also, Section 87454(b)(1) is renumbered to Section 87454(b)(2) to allow for the adoption of new Section 87454(b)(1).

Section 87565(g) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert this section from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87219(e)], these sections must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Section 87565(g)(1) and (2)], that state what an individual must declare on the Criminal

Record Statement, have been deleted from this location but are added to Section 87219(d)(1).

Section 87566(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term “employment application forms” with the term “personnel records,” add licensee and administrator to those whose records must be maintained and delete “available to the Department or licensing agency for review” from this location.

Factual Basis:

This amendment is necessary for clarity. Personnel records is a more appropriate term as items in Sections 87566(a)(1) through (13) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in new Section 87566(e).

Section 87566(a)(11) [Renumbered from Section 87566(b)]

Specific Purpose:

The specific purpose of this amendment is to, delete qualifying information as to who must submit a health screening, delete the requirement of a health statement for volunteers from this location, and to renumber Section 87566(b).

Factual Basis:

With the proposed amendments in Section 87566(a), a health screening can now be a subsection of Section 87566(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new proposed Section 87566(b). Existing Section 87566(b) is renumbered to Section 87566(a)(11) to make the health screening a subsection of Section 87566(a).

Section 87566(a)(12)

Specific Purpose:

The specific purpose of this section is to add hazardous health condition documents to the list of records that must be maintained on the licensee, administrator and all employees.

Factual Basis:

This section is necessary to clarify where hazardous health condition documents are to be maintained. Section 87565(f) requires that all personnel obtain a health screening including a

chest x-ray or intradermal test. The section further requires that a report be made of each screening, signed by a physician, that indicates whether the person has any condition that would create a hazard to himself/herself, other staff members or residents. This would include tuberculosis screening documents. However, the term “hazardous health condition documents” is used to encompass reports of any condition that is hazardous, not only tuberculosis.

Section 87566(a)(13) et seq.

Specific Purpose:

The specific purpose of these sections is to add a signed criminal record statement and documentation of a criminal record clearance or exemption to the list of records that must be maintained in the employee’s personnel record.

Factual Basis:

These sections are necessary for clarity. Section 87219(d) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. These sections only clarify where that statement must be maintained. In addition, Section 87219(h) requires that this documentation be kept in the individual’s personnel file. These sections repeat that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee’s personnel file.

Section 87566(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer’s personnel file.

Section 87566(f)

Specific Purpose:

The specific purpose of this section is to add a subdivision specifying that personnel records be maintained at the facility and be available for review.

Factual Basis:

This section is necessary for clarity and consistency with other like regulation sections proposed in this regulations package. The phrase “shall be available to the licensing agency for review” was previously in Section 87566(a).

Section 87566(f)(1)

Specific Purpose:

The specific purpose of this section is to state that a licensee may retain personnel records in a central location if they are made available upon request.

Factual Basis:

The Department acknowledges that large facilities or licensees with numerous licensed sites retain personnel files in a central administrative location. This section states that this practice is acceptable and may continue provided the files are available at the site when the licensing agency requests so.

Section 87566(g) [Renumbered from Section 87566(f)]

Specific Purpose:

The specific purpose of this section is to renumber Section 87566(f).

Factual Basis:

Section 87566(f) is renumbered to Section 87566(g) for consistency of format with the restructuring of Section 87566.

Section 87801(c)(10) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Section 87801(c)(11)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether they have a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Section 87801(c)(12) [Renumbered from Section 87801(c)(10)]

Specific Purpose:

The specific purpose of this section is to renumber Section 87801(c)(10).

Factual Basis:

Section 87801(c)(10) is renumbered to Section 87801(c)(12) for consistency of format with the adoption of new Sections 87801(c)(10) and (11).

Section 87801(d)(4)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87801(c)(11) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Sections 87801(d)(5) through (13) [Renumbered from Sections 87801(d)(4) through (12)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87801(d)(4) through (12).

Factual Basis:

Sections 87801(d)(4) through (12) are renumbered to Sections 87801(d)(5) through (13) for consistency of format with the adoption of new Section 87801(d)(4).

Section 87801(f)(2)

Specific Purpose:

The specific purpose of this section is to define the term a Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 87801(c)(11) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 87801(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 87819(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 87801(m)(2) [Renumbered from Section 87801(m)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87801(m).

Factual Basis:

Section 87801(m) is renumbered to Section 87801(m)(2) for consistency of format with the adoption of new Section 87801(m)(1).

Section 87801(r)(2)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. Therefore, it is important to provide a definition for those who may be affected.

Sections 87801(r)(3) through (5) [Renumbered from Sections 87801(2) through (4)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87801(r)(2) through (4).

Factual Basis:

Sections 87801(r)(2) through (4) are renumbered to Sections 87801(r)(3) through (5) for consistency of format with the adoption of new Section 87801(r)(2).

Section 87801(s)(4)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual's rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Sections 87801(s)(5) through (10) [Renumbered from Sections 87801(s)(4) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87801(s)(4) through (9).

Factual Basis:

Sections 87801(s)(4) through (9) are renumbered to Sections 87801(s)(5) through (10) for consistency of format with the adoption of new Section 87801(s)(4).

Section 87819(a)(2) et seq.

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87819(a)(3)

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 80019(e) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87819(a)(3)(A) et seq.

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

This section was previously in Section 87865(j). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal Record Statement directly following the requirement that an individual sign a Criminal

Record Statement.

Section 87819(a)(4)

Specific Purpose/Factual Basis:

This section is amended to make editorial corrections for consistency and clarity.

Existing Section 87819(a)(4)(B) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

These sections are no longer necessary in light of the new requirement [Section 87819(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 87819(a)(4)(B) and (a)(4)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis

This section is necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Section 87819(c) et seq.

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

These sections are no longer necessary in light of the new requirement [Section 87819(e)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 87819(c) et seq. [Renumbered from Section 87819(d) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819(d) to (c) and to replace existing fingerprint exempt requirements with current exemptions.

Factual Basis:

This amendment is necessary so that these sections are consistent in wording and order with other like regulation sections of this proposed regulations' package. Recent statutory changes (Health and Safety Code Section 1522(b)(2) affecting other facility types created clearer and more extensive fingerprint exempt situations. Existing fingerprint exemptions are reworded for clarity and thoroughness and placed in an order consistent with other sections proposed by these regulations. Section 87819(d) is renumbered to (c) for consistency of format.

Section 87819(d) et seq.

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819(e) to (d) and to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Sections 87819(e) and (e)(1)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of 87819(d) will result in an immediate and continued civil penalty.

Factual Basis:

This amendment is necessary because although Section 87854 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 87819(f)

Specific Purpose:

The specific purpose of this amendment is to state that a violation of 87819(d) may result in the denial of a license application or a suspension/revocation of a license

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Sections 87819(g) and (g)(3) [Renumbered from Sections 87819(f) and (f)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819(f) to Section 87819(g), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 87819(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 87819(f) is renumbered to Section 87819(g) for consistency of format.

Sections 87819(h) through (j)

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87819(g) through (i) to Sections 87819(h) through (j).

Factual Basis:

Sections 87819(g) through (i) are renumbered to Sections 87819(h) through (j) for consistency of format.

Section 87819(k)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1568.09(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Section 87819(k)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Section 87819(l)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement at proposed Section 87819(k) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Section 87819(l)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the Department of Justice. With the new requirement in proposed Section 87819(k) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department with additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Section 87819.1(a) et seq.

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in these subsections. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 87819.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive confirmation that the individual has been removed. Individuals who are ordered removed are individuals who

have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 87819.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual’s name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87819.1(c) [Renumbered from Section 87819.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819.1(a) to Section 87819.1(c) and to repeal out-of-date cross-references.

Factual Basis:

This amendment to renumber is necessary for consistency of format with the addition of new Sections 87819.1(a) and (b). Also, the cross-references are being repealed for consistency and clarity with the restructuring of Section 87819 by these regulations.

Sections 87819.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption .

Factual Basis:

These sections are necessary as a precursor to existing Section 87819.1(c), now renumbered to Section 87819.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Sections 87819.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Sections 87819.1(e) and (e)(1) [Renumbered from Sections 87819.1(b) and (b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87819.1(b) to Section 87819.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

These sections are necessary for consistency of format and clarity. Renumbering Section 87819.1(b) to Section 87819.1(e) is necessary with the addition of new Sections 87819.1(a), (b) and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 87819.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87819.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 87819.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding these sections makes it clear to the affected individual that this is considered.

Sections 87819.1(g) through (i) [Renumbered from Sections 87819.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 87819.1(c) through (e).

Factual Basis:

Sections 87819.1(c) through (e) are renumbered to Sections 87819.1(g) through (i) for consistency of format with the adoption of new Sections 87819.1(a), (b), (d) and (f).

Section 87819.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87819.1(f) et seq. from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 87819.1(r).

Section 87819.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87819.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 87819.1(t).

Section 87819.1(h) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 87819.1(h) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 87819.1(p).

Handbook Sections 87819.1(i) through (o)

Specific Purpose:

The specific purpose of this amendment is to repeal handbook sections that reference nonexemptible crimes in the Health and Safety Code and the Penal Code.

Factual Basis:

This amendment is necessary because this handbook section is outdated, incomplete and confusing because it is difficult to decipher which specific crimes are nonexemptible. A comprehensive list with specific crime names is included in the proposed new Handbook Sections 87819.1(m)(1) through (52).

Sections 87819.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 87819.1(b)(8), now renumbered to Sections 87819.1(e)(8), includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. These sections will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Section 87819.1(j)(2)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual

has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 87819.1(j)(2)(A)

Specific Purpose:

The specific purpose of this section is to state that if an individual did not receive formal probation, the Department may consider granting a criminal record exemption.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and may consider granting a criminal record exemption.

Section 87819.1(k)

Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to outline for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1568.09(g) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 87819.1(e) (Renumbered from Section 87819.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required since the last period of incarceration, probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

Section 87819.1(k)(1)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87819.1(k)(2)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal

record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87819.1(k)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation

or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87819.1(k)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 87819.1(k)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 87819.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Section 87819.1(k)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 87819.1(k)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a

significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 87819.1(l)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the criteria specified in Sections 87819.1(k)(1) through (6) is rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 87819.1(m) and Handbook Sections 87819.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 87819.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1568.09(f)(1) will not be granted a criminal record exemption. Also, a handbook is added.

Factual Basis:

Section 87219.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1568.09(f)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This nonexemptible crimes list, previously located in Handbook Sections 87819.1(i) through (o), has been updated to reflect current statute. Handbook Sections 87819.1(m)(1) through (52) provide the Health and Safety Code referenced in Section 87219.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections

87819.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 87819.1(n)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.”

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1568.09(c)(5) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 87819.1(d) through (l).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 87819.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual’s criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 87819.1(o) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual’s criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not

include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 87819.1(n)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 87819.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 87819.1(p) et seq.

Specific Purpose:

The specific purpose of these sections is to state what subsequent action the Department will take if a criminal record exemption is denied or cannot be granted.

Factual Basis:

These sections, with slight grammatical changes for clarity and consistency with other like regulation sections, were the previous Section 87819.1(h).

Section 87819.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1568.093 and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 87819.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 87819.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 87819.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 87819.1(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Section 87819.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 87819.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 87819.1(f) et seq., with the exception of new Section 87819.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 87819.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current law and regulation before a transfer is considered.

Section 87819.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 87819.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 87819.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 87819.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on

the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 87819.1(w) et seq.

Specific Purpose:

The specific purpose of this section is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Section 87819.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1568.082) or exclusion action process (Health and Safety Code Section 1568.092) will provide the individual with a hearing to contest the Department's action.

Sections 87854(b), (b)(1) and (b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a Department of Justice clearance or a criminal record exemption prior to their employment,

residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of Department of Justice clearance or a criminal record exemption prior to an individual's employment, residence or initial presence in the facility [Section 87819(d)], this section must be amended to coincide with that requirement.

Section 87854(b)(2) [Renumbered from Section 87854(b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 87854(b)(1) to Section 87854(b)(2).

Factual Basis:

Section 87854(b)(1) is renumbered to Section 87854(b)(2) for consistency of format.

Section 87861(c)(3)(B)

Specific Purpose:

The specific purpose of this amendment is to delete the word "cards".

Factual Basis:

This amendment is necessary because fingerprint cards are not the only method used to submit fingerprints. The Department recommends an electronic method of submitting fingerprint images.

Section 87865(j) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or a criminal record exemption prior to an individual's employment [Section 87819(d)], these sections must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Sections 87865(j)(1) and (2)], that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 87819(d)(1).

Section 87866(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term "employment application forms" with the term "personnel records," add licensee and administrator to those whose records must be maintained and repeal the phrase "available to the Department for review" from this location.

Factual Basis:

This amendment is necessary for clarity. Personnel records is a more appropriate term as items in Sections 87866(a)(1) through (14) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in Section 87866(d).

Section 87866(a)(12)

Specific Purpose:

The specific purpose of this section is to add documentation of a criminal record clearance or exemption to the list of records that must be maintained in the licensee, administrator and employee's personnel record.

Factual Basis:

This section is necessary for clarity. Section 87819(i) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Section 87866(a)(13) [Renumbered from Section 87866(b)]

Specific Purpose:

The specific purpose of this amendment is to, delete qualifying information as to who must submit a health screening, delete the requirement of a health statement for volunteers from this location, and to renumber Section 87866(b).

Factual Basis:

With the proposed amendments in Section 87866(a), a health screening can now be a subsection of Section 87866(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new proposed Section 87866(b). Existing Section 87866(b) is renumbered to 87866(a)(13) to make the health screening a subsection of Section 87866(a).

Section 87866(a)(14)

Specific Purpose:

The specific purpose of this section is to add tuberculosis test documents to the list of records that must be maintained on the licensee, administrator and all employees.

Factual Basis:

Tuberculosis test documents must be listed separately for clarity and emphasis. Tuberculosis tests are usually performed separate from a health screening. The health screening form provided by the Department includes limited space for a positive or negative tine test. Complete tuberculosis test documents could include results of a chest x-ray and/or other follow-up reports.

Section 87866(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Existing Section 87866(c) (Repealed)
Section 87866(c) [Renumbered from Section 87866(d)]

Specific Purpose:

Existing Section 87866(c) is repealed. Also, Section 87866(d) is being renumbered to Section 87866(c),

Factual Basis:

The repeal of existing Section 87866(c) is necessary for consistency. Also, the renumbering of Section 87866(d) to (c) is necessary for consistency of format with the repeal of existing Section 87866(c).

Section 87866(d) [Renumbered from Section 87866(e)]

Specific Purpose:

The specific purpose of this amendment is to add the phrase “and be available to the licensing agency for review” that was repealed in Section 87866(a) above. Also, this section is being renumbered.

Factual Basis:

This section is necessary for clarity and consistency. The phrase “be available to the Department (licensing agency) for review” that is proposed for repeal in Section 87866(a) above, is added to the existing language here as it logically follows that personnel records at the facility should be available to the licensing agency. Also, the renumbering of this section is necessary for consistency of format with the repeal of existing Section 87866(c).

Section 87866(e) [Renumbered from Section 87866(f)]

Specific Purpose/Factual Basis:

This amendment renumbers Section 87866(f) to (e) for consistency of format with the repeal of existing Section 87866(c).

Section 101152(c)(4)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index.”

Factual Basis:

This section is necessary to place this definition into regulation because existing regulations state that all license applicants, employees and adults associated with a licensed facility must submit a Child Abuse Central Index form so that the Department may conduct a search of the Child Abuse Central Index. This definition is taken from the definition of the Child Abuse Central Index within the California Department of Justice produced brochure, dated 2000, about the Child Protection Program.

Section 101152(c)(5)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility that cares for children depends upon whether the individual has a “Child Abuse Central Index clearance.” In addition, clients or persons who are placing clients in facilities that care for children and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand what a clearance means when a “Child Abuse Central Index clearance” is issued.

Sections 101152(c)(6) through (11) [Renumbered from Sections 101152(c)(4) through (9)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 101152(c)(4) through (9).

Factual Basis:

Sections 101152(c)(4) through (9) are renumbered to Sections 101152(c)(6) through (11) for consistency of format with the adoption of new Sections 101152(c)(4) and (5).

Section 101152(c)(12) et seq.

Specific Purpose:

The specific purpose of these regulations is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Section 101152(c)(13)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Section 101152(d)(3)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in proposed Section 101152(c)(13) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Sections 101152(d)(4) and (5) [Renumbered from Sections 101152(d)(3) and (4)]

Specific Purpose:

The specific purpose of these sections is to renumber Sections 101152(d)(3) and (4).

Factual Basis:

Sections 101152(d)(3) and (4) are renumbered to Sections 101152(d)(4) and (5) for consistency of format with the adoption of new Section 101152(d)(3).

Section 101152(f)(1)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in Section 101152(c)(13) includes an FBI clearance. In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of an FBI clearance. It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when an FBI clearance is issued.

Section 101152(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 101170(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 101152(m)(2) [Renumbered from Section 101152(m)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101152(m)(1).

Factual Basis:

Section 101152(m)(1) is renumbered to Section 101152(m)(2) for consistency of format with the adoption of new Section 101152(m)(1).

Section 101152(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. It is important to provide a definition for those who may be affected.

Section 101152(r)(2) [Renumbered from Section 101152(r)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101152(r)(1).

Factual Basis:

Section 101152(r)(1) is renumbered to Section 101152(r)(2) for consistency of format with the adoption of new Section 101152(r)(1).

Section 101152(s)(4)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual’s rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Section 101152(s)(5) [Renumbered from Section 101152(s)(4)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101152(s)(4).

Factual Basis:

Section 101152(s)(4) is renumbered to Section 101152(s)(5) for consistency of format with the adoption of new Section 101152(s)(4).

Sections 101170(a)(2)(D)(i) through (iv) (Handbook)

Specific Purpose:

The specific purpose of this amendment is to repeal the volunteer fingerprint exemption criteria from handbook.

Factual Basis:

These sections are repealed because this volunteer exemption language was amended by Senate Bill (SB), Chapter 819, Statutes of 2000.

Section 101170(b) et seq.

Specific Purpose:

The purpose of these sections is to place into regulation additional fingerprint exempt individuals and situations.

Factual Basis:

Senate Bill (SB) 1992, Chapter 819, Statutes of 2000, added a provision that allows the Department to define additional fingerprint exempt individuals similar to those defined in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv). The additional exempt individuals and situations are not only similar to Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv), but are virtually identical to other like Health and Safety Code Sections and regulation sections for other community care facility types. For easy reference the individuals and situations specified in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv) are included in these proposed subsections making this an inclusive list of all exempt individuals and situations.

Section 101170(c) [Renumbered from Section 101170(b)]

Specific Purpose:

This section is amended to renumber Section 101170(b) to (c).

Factual Basis:

Section 101170(b) is renumbered to Section 101170(c) for consistency of format with the adoption of new Section 101170(b).

Section 101170(d) [Renumbered from Section 101170(c)]

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual's statement regarding his/her criminal history be on the LIC 508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 101170(e) is amended to require that all individuals subject to a criminal record review have a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev. 1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 101170(d)(1) et seq. (New)

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

These sections were previously in Section 101216(i). This amendment is necessary because it is logical to place the section that specifies what an individual must declare on a Criminal Record Statement directly following the requirement that an individual sign a Criminal Record Statement.

Section 101170(d)(2)[Renumbered from Section 101170(d)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(d)(1), make a grammatical change and to correct a cross-reference.

Factual Basis:

Section 101170(d)(1) is renumbered to Section 101170(d)(2) for consistency of format with addition of a new Section 101170(d)(1) [previously Section 101216(i)]. The grammatical and cross-reference amendments are for clarity and accuracy.

Sections 101170(d)(2)(B) and (d)(2)(B)1.

Specific Purpose:

The specific purpose of this amendment is to repeal language that allows for citation for failure to submit fingerprints and to convert the section to a requirement that a licensee or license applicant not submit fingerprints for individuals who are not or will not be associated with his or her facility.

Factual Basis

This requirement is no longer necessary in light of the new requirement [Section 101170(e)] that all individuals subject to a criminal record review have a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in the facility. The new language is necessary to prevent licensees from allowing non-licensed entities from using their license number to process background checks on individuals who do not or will not work or reside in their facility. In addition to a violation of statute, this practice creates an undue workload for the Department.

Section 101170(d)(2)(B)2. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the requirement that the licensee submit fingerprints to the Department of Justice after citation for failure to do so.

Factual Basis

With the requirement of a Department of Justice clearance prior to initial presence in the facility [Section 101170(e)], this requirement is unnecessary.

Section 101170(d)(2) et seq. [Renumbered from Section 101170(c)(2) et seq.] (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 101170(e)] that all individuals subject to a criminal record review have a Department of Justice clearance or a criminal record exemption prior to employment, residence or initial presence in the facility.

Section 101170(e) et seq. [Renumbered from Section 101170(d) et seq.]

Specific Purpose:

The specific purpose of this amendment is to replace existing language with the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This amendment is necessary to implement the requirements of Health and Safety Code Section 1522.04(a). Section 1522.04(a) requires that individuals obtain either a criminal record clearance or exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of

the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Section 101170(f) et seq. [Renumbered from Section 101170(d)(1) et seq.]

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Subsection 101170(d)(1) is renumbered to Section 101170(f) due to the restructuring of Section 101170. Subsections 101170(d)(1)(A) through (E) are renumbered to Subsections 101170(f)(1) through (5) for consistency of format.

Section 101170(g)[Renumbered from Section 101170(e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(e).

Factual Basis:

Section 101170(e) is renumbered to Section 101170(g) for consistency of format.

Sections 101170(h) and (h)(1)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 101170(e) will result in an immediate and continued civil penalty.

Factual Basis:

This adoption is necessary because although Section 101195 gives the Department authority to assess civil penalties for failure to correct cited violations of any regulation section, as agreed upon in a plan of correction, statute allows the Department to assess immediate civil penalties for fingerprint violations.

Section 101170(i)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 101170(e) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it

emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Sections 101170(j) [Renumbered from Section 101170(f)]

Specific Purpose:

The purpose of this amendment is to renumber Section 101170(f).

Factual Basis:

Sections 101170(f) is renumbered to Section 101170(j) for consistency of format.

Sections 101170(k) and (k)(3) [Renumbered from Sections 101170(g) and (g)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(g) to Section 101170(k), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 101170(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 101170(g) is renumbered to Section 101170(k) for consistency of format.

Section 101170(l) [Renumbered from 101170(h)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170(h) to 101170(l).

Factual Basis:

This amendment is necessary for consistency of format.

Section 101170(m)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department,

by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1596.871(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Section 101170(m)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e., facility removal and/or exemption application or administrative action).

Section 101170(n)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement at proposed Section 101170(m) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information.

Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Sections 101170(n) and (n)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement at proposed Section 101170(m) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Sections 101170.1(a) and (a)(1) through (5)

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in these subsections. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 101170.1(b)

Specific Purpose:

The specific purpose of this section is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

This section is necessary so that the Department will have positive confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 101170.1(b)(1)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual’s removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual’s name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 101170.1(c) [Renumbered from Section 101170.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170.1(a) to Section 101170.1(c) and to delete the phrase "from Section 101170(e) or (c)(2)."

Factual Basis:

This amendment to renumber is necessary for consistency of format with the addition of new Sections 101170.1(a) and (b).

Sections 101170.1(d) and (d)(1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption .

Factual Basis:

These sections are necessary as a precursor to existing Section 101170.1(c), now renumbered to Section 101170.1(g), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Sections 101170.1(d)(2) and (3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Sections 101170.1(e) and (e)(1)

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170.1(b) to Section 101170.1(e) and to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

These sections are necessary for consistency of format and clarity. Renumbering Section 101170.1(b) to Section 101170.1(e) is necessary with the addition of new Sections 101170.1(a), (b) and (d). The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 101170.1(e)(6)(A)

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E (Rev. 9/02).

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of

Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 101170.1(e)(8)(A)1.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

Section 101170.1(f) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

This section is necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Sections 101170.1(g) through (i) [Renumbered from Sections 101170.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 101170.1(c) through (e).

Factual Basis:

Sections 101170.1(c) through (e) are renumbered to Sections 101170.1(g) through (i) for consistency of format with the restructuring of Section 101170.1.

Section 101170.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 101170.1(f) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 101170.1(s).

Section 101170.1(g)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 101170.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 101170.1(t).

Section 101170.1(j) and (j)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because existing regulation Section 101170.1(b)(8), now renumbered to Section 101170.1(e)(8), includes “evidence of honesty and truthfulness.” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements

supported by the individual's criminal history or if it becomes aware that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Section 101170.1(j)(2)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate successful completion of these terms before being deemed rehabilitated.

Section 101170.1(j)(2)(A)

Specific Purpose:

The specific purpose of this section is to state that if an individual did not receive formal probation, the Department may consider granting a criminal record exemption.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and may consider granting a criminal record exemption.

Section 101170.1(k)

Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to provide for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1596.871(f) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 101170.1(e) (Renumbered from Section 101170.1(b) by these proposed regulations) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years must lapse since the last period of incarceration, probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

Section 101170.1(k)(1)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 101170.1(k)(2)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 101170.1(k)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 101170.1(k)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 101170.1(k)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 101170.1(k)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Section 101170.1(k)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 101170(k)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 101170.1(l)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the time requirements specified in Sections 101170.1(l)(1) through (6) is a rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent criminal activity, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 101170.1(m) and Handbook Sections 101170.1(m)(1) through (52)

Specific Purpose:

The specific purpose of Section 101170.1(m) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1596.871(f) will not be granted a criminal record exemption. Also, a handbook is added.

Factual Basis:

Section 101170.1(m) is necessary to implement and clarify the provisions of Health and Safety Code Section 1596.871(f) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This nonexemptible crimes list, previously located in Handbook Sections 101170(h)(1), has been updated to reflect current statute. Handbook Sections 101170.1(m)(1) through (52) are added to provide the Health and Safety Code referenced in Section 101170.1(m) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections 101170.1(m)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 101170.1(n)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1596.871(c)(3) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 101170.1(c) through (m).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 101170.1(n)(1)

Specific Purpose:

The purpose of this section is to state that if the individual's criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 101170.1(o) of the proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 101170.1(n)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 101170.1(o)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 101170.1(p) et seq. [Renumbered from Section 101170.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101170.1(h), to make grammatical changes and to delete the word "prospective".

Factual Basis:

Section 101170.1(h) is renumbered to Section 101170.1(q) for consistency of format with the restructuring of Section 101170.1. Grammatical changes are made for clarity.

Deletion of "prospective" is necessary because with the new requirement of clearance or exemption prior to an individual's employment [Section 101170(e)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility.

Section 101170.1(q)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1596.8897 and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and

for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 101170.1(q)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 101170.1(q). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 101170.1(q)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 101170.0(q)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Section 101170.1(q)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 101170.1(r) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 101170.1(f) et seq., with the exception of new Section 101170.1(r)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 101170.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current law and regulation before a transfer is considered.

Section 101170.1(t)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 101170.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 101170.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 101170.1(v) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 101170.1(w) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Section 101170.1(x)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1596.885) or exclusion action process (Health and Safety Code Section 1596.8897) will provide the individual with a hearing to contest the Department's action.

Section 101170.2(b)(1)

Specific Purpose:

The purpose of this amendment is to add clarifying language and to delete the phrase "prior to the individual's employment, residence or initial presence in the facility".

Factual Basis:

The clarifying language is necessary so it cannot be assumed that the CACI check is a fingerprint based check. With the requirement at Section 101170.2(c) that individuals must have a CACI clearance prior to employment, residence or presence, the language that states when the CACI check must be submitted is unnecessary.

Sections 101195(b), (b)(1) and (b)(1)(A)

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not

obtained a criminal record clearance or exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual's employment, residence or initial presence in the facility [Section 101170(e)], these sections must be amended to coincide with that requirement.

Section 101195(b)(2) [Renumbered from Section 101195(b)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 101195(b)(1) to Section 101195(b)(2).

Factual Basis:

This amendment is necessary for consistency of format.

Section 101212(e)(3)(B)

Specific Purpose:

The specific purpose of this amendment is to delete the word "cards" and to correct a cross-reference.

Factual Basis:

This amendment is necessary because fingerprint cards are not the only method used to submit fingerprints. The Department recommends an electronic method of submitting fingerprint images.

Section 101216(i) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert these sections from a requirement that an individual sign a criminal record statement pending receipt of a criminal record transcript to a requirement that an individual obtain a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual's employment [Section 101170(e)], these sections must be amended to coincide with that requirement.

The requirement that an individual sign a Criminal Record Statement and the subsections [Sections 101216(i)(1) and (2)] that state what an individual must declare on the Criminal Record Statement, have been deleted from this location but are added to Section 101170(d)(1).

Section 101217(a)

Specific Purpose:

The specific purpose of this amendment is to replace the term "employment application forms" with the term "personnel records," add licensee and administrator to those whose records must be maintained on and delete "available to the Department for review" from this location.

Factual Basis:

This amendment is necessary for clarity. Personnel records is a more appropriate term as items in Sections 101217(a)(1) through (14) are not all employment application forms. The requirement that all personnel forms be available to the licensing agency for review can now be found in Section 101217(d).

Section 101217(a)(11) [Renumbered from Section 101217(b)]

Specific Purpose:

The specific purpose of this amendment is to delete qualifying information as to who must submit a health screening, delete the requirement of a health statement for volunteers from this location and to renumber Section 101217(b).

Factual Basis:

With the proposed amendments in Section 101217(a), a health screening can now be a subsection of Section 101217(a) and specifying licensee, employees and administrator is unnecessary. Volunteer requirements have been moved to the new proposed Section 101217(b). Existing Section 101217(b) is renumbered to 101217(a)(11) to make the health screening a subsection of Section 101217(a).

Section 101217(a)(12)

Specific Purpose:

The specific purpose of this section is to add tuberculosis test documents to the list of records that must be maintained on all employees.

Factual Basis:

Tuberculosis test documents must be listed separately for clarity and emphasis. Tuberculosis tests are usually performed separate from a health screening. The health screening form provided by the Department includes limited space for a positive or negative tine test. Complete tuberculosis test documents could include results of a chest x-ray and/or other follow-up reports.

Section 101217(a)(13)

Specific Purpose:

The specific purpose of this section is to add a signed criminal record statement to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

This section is necessary for clarity. Section 101170(d) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. This section only clarifies where that statement must be maintained.

Section 101217(a)(14)

Specific Purpose:

The specific purpose of this section is to add documentation of a criminal record clearance or exemption to the list of records that must be maintained in the employee's personnel record.

Factual Basis:

This section is necessary for clarity. Section 101170(k) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Section 101217(b) et seq.

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirements so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Section 101217(d)

Specific Purpose:

The specific purpose of this section is to add the word "personnel" and to include the phrase "shall be available to the licensing agency for review" that was repealed in Section 101217(a) above.

Factual Basis:

This section is necessary for clarity and consistency. "Personnel records" is a more descriptive term that is used throughout this section. The phrase "shall be available to the Department (licensing agency) for review" that is proposed for repeal in Section 101217(a) above, is added to the existing language here as it logically follows that personnel records at the facility should be available to the licensing agency.

Section 102352(c)(3)

Specific Purpose:

The specific purpose of this section is to define the term "Child Abuse Central Index."

Factual Basis:

This section is necessary to place this definition into regulation because existing regulations state that all license applicants, employees and adults associated with a licensed facility must submit a Child Abuse Central Index form so that the Department may conduct a search of the Child Abuse Central Index. This definition is taken from the definition of the Child Abuse Central Index within the California Department of Justice produced brochure, dated 2000, about the Child Protection Program.

Section 102352(c)(4)

Specific Purpose:

The specific purpose of this section is to define the term “Child Abuse Central Index clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility that cares for children depends upon whether the individual has a “Child Abuse Central Index clearance.” In addition, clients or persons who are placing clients in facilities that care for children and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand what a clearance means when a “Child Abuse Central Index clearance” is issued.

Section 102352(c)(5) [Renumbered from Section 102352(c)(3)]

Specific Purpose:

The specific purpose of this regulation is to renumber Section 102352(c)(3).

Factual Basis:

Section 102352(c)(3) is renumbered to Section 102352(c)(5) for consistency of format with the adoption of new Sections 102352(c)(3) and (4).

Section 102352(c)(6) et seq.

Specific Purpose:

The specific purpose of these sections is to define the term “conviction.”

Factual Basis:

These sections are necessary to place this definition into regulation because existing regulations state the actions that the Department is required to take if the Department learns that an individual has been “convicted” of a crime.

Section 102352(c)(7)

Specific Purpose:

The specific purpose of this section is to define the term “criminal record clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a “criminal record clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a criminal record clearance. It is necessary that they understand that criminal record clearance means both a DOJ and an FBI clearance.

Section 102352(d)(3)

Specific Purpose:

The specific purpose of this section is to define the term “Department of Justice clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in proposed Section 102352(c)(7) includes a “Department of Justice clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Department of Justice clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Department of Justice clearance” is issued.

Section 102352(d)(4) [Renumbered from Section 102352(d)(3)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102352(d)(3).

Factual Basis:

Section 102352(d)(3) is renumbered to Section 102352(d)(4) for consistency of format with the adoption of new Section 102352(d)(3).

Section 102352(f)(2)

Specific Purpose:

The specific purpose of this section is to define the term “Federal Bureau of Investigation (FBI) clearance.”

Factual Basis:

This section is necessary to place this definition into regulation because the ability to be licensed or employed in a community care facility depends upon whether the individual has a criminal record clearance. A criminal record clearance as defined in proposed Section 102352(c)(7) includes a “Federal Bureau of Investigation (FBI) clearance.” In addition, clients or persons who are placing clients in community care facilities and who depend upon the Department for protection must have a clear definition of a “Federal Bureau of Investigation (FBI) clearance.” It is necessary that they understand what a clearance means, including what kinds of infractions of the law are not included when a “Federal Bureau of Investigation (FBI) clearance” is issued.

Section 102352(m)(1)

Specific Purpose:

The specific purpose of this section is to define the term “medical professional.”

Factual Basis:

This section is necessary to place this definition into regulation because Section 102370(b) states that a medical professional, under certain conditions is exempt from submitting fingerprints for the purpose of a criminal record review. This definition is necessary so that it is clear that for the purposes of these regulations, a medical professional only applies to specific titles licensed in California.

Section 102352(r)(1)

Specific Purpose:

The specific purpose of this section is to define the term “rehabilitation.”

Factual Basis:

This section is necessary to place this definition into regulation because the Department provides individuals without a criminal record clearance, who meet specific criteria, an opportunity to request an exemption so that they may be licensed, employed in, or present in a community care facility. One of the factors the Department considers when granting an exemption is whether or not the individual can demonstrate rehabilitation. It is important to provide a definition for those who may be affected.

Section 102352(r)(2) [Renumbered from Section 102352(r)(1)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102352(r)(1).

Factual Basis:

Section 102352(r)(1) is renumbered to Section 102352(r)(2) for consistency of format with the adoption of new Section 102352(r)(1).

Section 102352(s)(1)

Specific Purpose:

The specific purpose of this section is to define the term “simplified exemption.”

Factual Basis:

This section is necessary to define this term to clarify that a simplified exemption is an option available to and used by the Department, provided the individual meets specific criteria. Subsequent regulations outline the simplified exemption criteria. The simplified exemption is a determination by the Department, based on the individual’s rap sheet alone, that the individual has demonstrated substantial and convincing evidence to support a finding of good character.

Section 102370(b) et seq.

Specific Purpose:

The purpose of these sections is to list individuals who are exempt from the fingerprint requirement.

Factual Basis:

Senate Bill (SB) 1992, Chapter 819, Statutes of 2000, added a provision that allows the Department to define additional fingerprint exempt individuals similar to those defined in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv). The additional exempt individuals and situations are not only similar to Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv), but are virtually identical to other like Health and Safety Code Sections and regulation sections for other community care facility types. For easy reference the individuals and situations specified in Health and Safety Code Sections 1596.871(b)(1)(D)(i) through (iv) are included in these proposed subsections making this an inclusive list off all exempt individuals and situations.

Section 102370(c) [Renumbered from Section 102370(b)]

Specific Purpose:

The specific purpose of this amendment is to delete the statement that individuals must submit their fingerprints prior to employment, residence or initial presence in the facility and to require that an individual’s statement regarding his/her criminal history be on the LIC

508.

Factual Basis:

This amendment is necessary to convert this section into a straight requirement that all individuals subject to a criminal record review submit fingerprints and sign a Criminal Record Statement, LIC 508. Stating prior to employment, residence or initial presence in the facility is no longer necessary because Section 102370(d) is amended to require that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Requiring that the criminal record statement be on an LIC 508 is necessary so that only one format is used for criminal record statements. The Department has found that criminal record statements, individually created in a narrative format, are either incomplete or vague. The LIC 508 asks specific questions about an individual's convictions and most importantly informs the individual that if they request and are ultimately granted a criminal record exemption, his/her criminal history may be made available to the public. In addition the LIC 508 informs the individual that if he/she knowingly make a false statement, his/her exemption request will be denied. Requiring that a criminal record statement be on an LIC 508 ensures that all individuals receive this information before he/she proceeds with being fingerprinted or pursuing a criminal record exemption.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370(c)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to specify what an individual must declare on the Criminal Record Statement.

Factual Basis:

These sections are necessary so individuals are aware what information must be declared. This section is necessary for consistency with other like regulation sections.

Section 102370(c)(2) [Renumbered from Section 102370(c)(1)]

Specific Purpose:

This specific purpose of this amendment is to renumber Section 102370(c)(1) and to correct a cross-reference from Section 102369(b)(8) to Section 102370(j).

Factual Basis:

This amendment is necessary to correct a cross-reference error and to renumber Section 102370(c)(1) to Section 102370(c)(2) for consistency and clarity.

Section 102370(c)(2)(B) et seq. [Renumbered from Section 102370(b)(1) et seq.]
(Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that allows for citation for failure to submit fingerprints.

Factual Basis:

These sections are no longer necessary in light of the new requirement [Section 102370(d)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Sections 102370(c)(2)(B) and (c)(2)(B)1. (New)

Specific Purpose:

The specific purpose of these sections is to clarify that a licensee or license applicant may not submit fingerprints for individuals who are not or will not be associated with his or her facility and thus are not within the Department's authority for receiving criminal record information.

Factual Basis

These sections are necessary to prevent non-licensed entities from using a license number to process fingerprints and obtain criminal record information for individuals who are not within the Department's authority for receiving criminal record information.

Section 102370(c)(2) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the language that clarifies conditions for

continued employment.

Factual Basis:

This section is no longer necessary in light of the new requirement [Section 102370(d)] that all individuals subject to a criminal record review have a criminal record clearance or exemption prior to employment, residence or initial presence in the facility.

Section 102370(d) et seq.

Specific Purpose:

The specific purpose of this adoption is to add the requirement that all individuals, subject to a criminal record review, have a Department of Justice clearance or a criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of an exemption prior to employment, residence or initial presence in a facility.

Factual Basis:

This adoption is necessary to implement the requirements of Health and Safety Code Section 1522.04(a) which requires that individuals obtain either a criminal record clearance or exemption prior to employment, residence or initial presence in a facility when live-scan technology is operational.

Live-scan is an electronic method of transmitting fingerprint images to the Department of Justice. Health and Safety Code Section 1522.04(c) states that live-scan is operational when the Department of Justice and the district offices of Community Care Licensing Division of the Department live-scan sites are operational and the Department is receiving 95 percent of its total responses indicating either no evidence of recorded criminal information or evidence of recorded criminal information, from the Department of Justice within three business days.

The Department has determined that live-scan technology is operational.

If an individual has already received a criminal record clearance through their association with a state licensed facility and is requesting to transfer the clearance to another state licensed facility, the individual must only submit the transfer request before he/she can begin working or be present in the second facility. It is necessary to require that the individual submit the transfer request to ensure current association to easily locate the individual in the event the individual is subsequently arrested or convicted.

However, if the individual has a criminal record exemption, the Department must retain the discretion to disallow employment or presence in a facility prior to completion of the exemption transfer. Upon receipt of an exemption transfer request the exemption is reviewed for appropriateness. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being

transferred. For example, if the individual was convicted of a driving under the influence (DUI) violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles.

Sections 102370(e) and (e)(1)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 102370(d) will result in an immediate and continued civil penalty.

Factual Basis:

Civil penalties are not assessed against Family Child Care Homes for other regulations violations. Statute allows the Department to assess immediate civil penalties for fingerprint violations. This amendment is necessary to inform licensees that a violation of this regulation may result in a civil penalty assessment.

Section 102370(f)

Specific Purpose:

The specific purpose of this adoption is to state that a violation of Section 102370(d) may result in the denial of a license application or a suspension/revocation of a license.

Factual Basis:

Though a violation of any regulation section could ultimately result in the denial of a license application or a suspension/revocation of a license, this section is necessary because it emphasizes the seriousness of fingerprint violations. Licensees and license applicants must be aware that having individuals in their facilities without a clearance or an exemption could jeopardize the issuance or continuation of their license.

Sections 102370(g) and (g)(3)

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102370(c) to Section 102370(g), to delete the word prospective and to make grammatical changes.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice

clearance or criminal record exemption prior to an individual's employment [Section 102370(d)], only current employees who were subsequently convicted or arrested for a serious offense, would be excluded from a facility. Grammatical changes are made for clarity and consistency with other like regulation sections. Section 102370(c) is renumbered to 102370(g) for consistency of format.

Sections 102370(h) and (i) [Renumbered from Sections 102370(d) and (e)]

Specific Purpose:

The purpose of this amendment is to renumber Sections 102370(d) and (e).

Factual Basis:

Sections 102370(d) and (e) are renumbered to Sections 102370(h) and (i) for consistency of format with the restructuring of Section 102370.

Section 102370(j) et seq. [Renumbered from Section 102370(f) et seq.]

Specific Purpose/Factual Basis:

These sections are amended to clarify that a transfer may be requested by an applicant or a licensee; to correct the reference of a "written request" to the LIC 9182 (Rev. 4/02); to update the revision date of the LIC 508 from Rev. 3/99 to Rev. 1/03; to add the phrase "to the Department;" and to make editorial corrections. These sections are necessary for clarity and consistency.

It is necessary to require that all transfer requests be on the LIC 9182 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9182 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9182, Criminal Background Clearance Transfer Request, Rev. 4/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 102370(k) [Renumbered from Section 102370(g)]

Specific Purpose:

The purpose of this amendment is to renumber Section 102370(g).

Factual Basis:

Section 102370(g) is renumbered to Section 102370(k) for consistency of format with the restructuring of Section 102370.

Section 102370(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the requirement that individuals who are required to have a criminal record clearance or an exemption inform the Department, by telephone, if they are subsequently arrested, convicted, or have a parole or probation violation.

Factual Basis:

This section is necessary for protection of the clients in care. The Department will receive a subsequent criminal record history from the DOJ, however, this may take several months. Meanwhile, the individual would continue to work or be present in the licensed facility. If an individual informs the Department of the arrest, conviction, or probation or parole violation, the Department will investigate the underlying factual allegations concerning the event pursuant to Health and Safety Code Section 1596.871(e). At the conclusion of the investigation, the Department will make an immediate decision regarding the individual's continued licensure or presence in the facility. If warranted, the Department may begin an administrative action or instruct the individual on how to apply for a criminal record exemption if the individual was convicted. A conviction may warrant a TSO or immediate exclusion action.

Section 102370(l)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to place into regulation the requirement that an individual follow up the telephone notice of a subsequent arrest, conviction, or parole or probation violation with written notice to the Department and to specify the elements that must be part of that notice.

Factual Basis:

These sections are necessary to document that the individual has met his or her reporting requirement, and additionally, if the Department is required to take an action based upon the information, there will be documentation to ensure that the Department has not taken an arbitrary action. The required information is necessary so that the Department can evaluate the underlying information about the event and determine the next appropriate step (i.e. facility removal and/or exemption application or administrative action).

Section 102370(m)

Specific Purpose:

The specific purpose of this section is to allow the Department to seek verification on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

With the new requirement at proposed Section 102370(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event and then to supply specific information about the event, the Department must be able to verify this information. Without the authority to verify the information about the event, obtaining the information from the individual would be useless.

Section 102370(m)(1)

Specific Purpose:

The specific purpose of this section is to allow the Department to act on information received from sources other than the DOJ about an individual's criminal history.

Factual Basis:

Once the Department has verified the arrest, conviction, or parole or probation violation information and has obtained admissible evidence of the event, the Department must be able to use this information in the same manner it uses criminal record information received from the DOJ. With the new requirement at proposed Section 102370(l) that an individual report an arrest, conviction, or parole or probation violation within 48 hours of the event, and then to supply the Department additional information within seven days, the Department will receive this information sooner than it would from the DOJ. The Department must be able to use this information and act immediately to protect the health and welfare of clients in care. Without the authority to use the admissible evidence of the event, obtaining the information would be useless.

Sections 102370.1(a) and (a) (1) through (5)

Specific Purpose:

The specific purpose of these sections is to require that a licensee remove an individual who has been convicted of certain crimes and/or whom the Department has ordered removed.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes listed in this subsection. The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care. These sections are necessary so that the crimes that will result in immediate removal are clarified by regulation.

Section 102370.1(a)(6)

Specific Purpose:

The specific purpose of this section is to clarify that failure to comply with Section 102370.1(a) may result in a civil penalty of \$50 per day.

Factual Basis:

It is necessary to specify that civil penalties may be assessed for non-compliance with this section because, in general, civil penalties are not assessed for this license category. Currently non-compliance of only two other subsections may result in a civil penalty.

Sections 102370.1(b) and (b)(1)

Specific Purpose:

The specific purpose of these sections is to require that the licensee confirm within five days, that the individual has been removed.

Factual Basis:

These sections are necessary so that the Department will have positive and immediate confirmation that the individual has been removed. Individuals who are ordered removed are individuals who have been convicted of serious crimes against persons or who the Department has determined may pose a threat to clients in care. Their continued presence in a facility is an immediate threat to the health and safety of those clients. The Department must have a written assurance from the licensee that the individual has in fact been removed. Requiring that the licensee send the confirmation of removal within five days is necessary to emphasize the importance and urgency of removing the individual. A letter sent to the licensee requires that the individual be removed “immediately”. It is reasonable

to require a confirmation of that immediate removal within five days. If the licensee were given a longer time period to send in the confirmation, this would give the impression that confirmation of the removal was not important.

Section 102370.1(b)(1)(A)

Specific Purpose:

The specific purpose of this section is to require that the written confirmation of an individual's removal be on either a Removal Confirmation LIC 300A (Rev. 12/02), Removal Confirmation 300B (Rev. 12/02), Removal Confirmation 300C (Rev. 12/02) or Removal Confirmation 300D (Rev. 12/02).

Factual Basis:

This section is necessary so that confirmation will be on an easily identifiable and uniform format. The Department will send each licensee the required form with the affected individual's name and identification number on it.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 300A, Removal Confirmation – Exemption Needed, Rev. 12/02; the LIC 300B, Removal Confirmation - Denial, Rev. 12/02; the LIC 300C, Removal Confirmation - Rescinded, Rev. 12/02; and the LIC 300D, Removal Confirmation - Nonexemptible, Rev. 12/02. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 102370.1(b)(1)(B)

Specific Purpose:

The specific purpose of this section is to clarify that failure to comply with Section 102370.1(b) may result in a civil penalty of \$50 per day.

Factual Basis:

It is necessary to specify that civil penalties may be assessed for non-compliance with this particular section because, in general, civil penalties are not assessed for Family Child Care Homes. Currently non-compliance of only two other subsections may result in a civil penalty.

Section 102370.1(b)(2)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual has been removed or excluded from the family child care home by providing copies of the LIC 995B.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995B, Addendum to Notification of Parents Rights (Regarding Removal/Exclusion), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(b)(2)(A)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual, who has been excluded or removed, may return to the family child care home by providing copies of the LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995C, Addendum to Notification of Parents Rights (Regarding Reinstatement), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(b)(3)

Specific Purpose:

The specific purpose of this regulation is to require that licensees obtain a signed and dated receipt from parents or authorized representatives that acknowledges that they received a copy of the LIC 995B or LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

Section 102370.1(b)(4)

Specific Purpose:

The specific purpose of this regulation is to require that licensees maintain copies of signed and dated LIC 995B or LIC 995C and that these copies be made available to the Department upon request.

Factual Basis:

This section is necessary to enable the Department to fulfill its statutory mandate to monitor facilities and ensure that the licensee is complying with the requirement that parents/guardians receive copies of the LIC 995B or LIC 995C.

Section 102370.1(c) [Renumbered from Section 102370.1(a)]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102370.1(a) to Section 102370.1(c).

Factual Basis:

This amendment to renumber is necessary for consistency of format with the addition of new Sections 102370.1(a) and (b).

Section 102370.1(c)(3)(A)

Specific Purpose:

The specific purpose of this amendment is to state that in addition to the nature of the crime, the Department will consider whether the crime involved violence or a threat of violence to others.

Factual Basis:

This section is necessary for clarity. The Department has always considered whether the crime involved violence or a threat of violence to others when evaluating a criminal record exemption request. Adding this phrase makes it clear to the affected individual that this is considered.

Section 102370.1(c)(3)(E)1.

Specific Purpose:

The specific purpose of this section is to require that character references be on a newly created reference request form, the LIC 301E.

Factual Basis:

This section is necessary so that only one format is used for character references. The Department has found that character references, individually created in letter format, are so general and vague that it is unclear whether the writer of the reference is aware of why they are writing the reference. The reference request form asks specific questions and most importantly informs the reference that the affected individual wishes to care for a specific client group in a community care facility.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 301E, Reference Request - Exemptions, Rev. 9/02. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(c)(3)(G)1.a.

Specific Purpose:

The specific purpose of this section is to change the revision date of the LIC 508 from 3/99 to 1/03.

Factual Basis:

The LIC 508 was revised in January 2003 to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 508, Criminal Record Statement, Rev.1/03. This form is

not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102370.1(c)(4) et seq.

Specific Purpose

The specific purpose of these sections is to state what additional factors the Department will consider in evaluating a request for a criminal record exemption.

Factual Basis

These sections are necessary for clarity. The Department has always considered the facility type and association and the age of the individual when evaluating a criminal record exemption request. Adding these sections makes it clear to the affected individual that this is considered.

Section 102370.1(b) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal the sections that reference the non-exemptible crimes in Health and Safety Code Section 1596.871(f) and Penal Code Section 667.5(c).

Factual Basis:

This amendment is necessary because these sections are outdated, incomplete and difficult to decipher which specific crimes are non-exemptible. A comprehensive list with specific crime names is included in the new proposed Handbook Sections 102370.1(k)(1) through (52).

Sections 102370.1(d) and (d) (1)

Specific Purpose:

The specific purpose of these sections is to require that an individual submit an exemption request to the Department within a specific time frame and that the individual cooperate with the Department by submitting any additional information the Department requests to process the exemption.

Factual Basis:

These sections are necessary as a precursor to existing Section 102370.1(c), now renumbered to Section 102370.1(e), that gives the Department authority to deny an exemption request if the request is incomplete or if the exemption applicant does not cooperate with the Department. It is a logical order to require an individual to submit requested information and cooperate with

the Department before stating that the Department has the authority to deny an exemption for failure to do so. The 30-day time frame is allowed because the licensee must submit a written request for the exemption, the individual's personal statement, three letters of reference on behalf of the individual and documentation attesting to the individual's rehabilitation.

Sections 102370.1(d)(2) and (d)(3)

Specific Purpose:

The specific purpose of these sections is to state what action the Department will take if the documents, requested by the Department in the written notice, are not submitted within 30 days.

Factual Basis:

These sections are necessary because there is distinction between the action taken if the exemption applicant is an employee or resident or a license applicant, licensee, spouse or dependent adult.

An employee who does not submit documents can be terminated from employment. A resident who is not a dependent adult can move out of the facility. In both cases, the license application process or facility operation can continue and their exemption case, if closed rather than denied, can be reopened at a later date if so requested.

For license applicants, however, the exemption case cannot be merely closed because license approval is dependent on an exemption decision. The exemption must be denied so that the license application can be denied. If the exemption applicant is a licensee, continued licensure is dependent on an exemption decision. If the facility is the residence of a dependent adult, this adult cannot move or be removed from the facility. Both situations are critical because clients would be in the care of, or living with, an individual with criminal convictions that have not been exempted. In both cases, the exemption must be denied so that administrative action to revoke the license can begin.

Sections 102370.1(e) through (g) [Renumbered from Sections 102370.1(c) through (e)]

Specific Purpose:

The specific purpose of this amendment is to renumber Sections 102370.1(c) through (e).

Factual Basis:

Sections 102370.1(c) through (e) are renumbered to Sections 102370.1(e) through (g) for consistency of format with the restructuring of Section 102370.1.

Existing Section 102370.1(f) et seq. (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 102370.1(f) et seq. from this location.

Factual Basis:

The language in these sections, with slight modifications, can be found in the new Section 102370.1(p).

Existing Section 102370.1(g) (Repealed)

Specific Purpose:

The specific purpose of this amendment is to repeal current Section 102370.1(g) from this location.

Factual Basis:

The language in this section, with slight modifications, can be found in the new Section 102370.1(r).

Section 102370.1(h) and (h)(1) et seq.

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual lies or makes misleading statements on either their exemption application or in regards to their conditional exemption.

Factual Basis:

These sections are necessary because Section 102370.1(c)(3)(G) includes “evidence of honesty and truthfulness” as a factor evaluated in the review of an exemption request. Throughout the approximately 25 years of evaluating exemption requests, the Department has encountered exemption requestors who have submitted documents with contradictory statements regarding their criminal history. The Department has exhausted many hours attempting to get a statement from the requestor, that is truthful and consistent with their criminal history. Additionally, the Department has encountered individuals with denied exemptions working in other licensed facilities because the individual concealed that fact from the licensee. Individuals with a conditional exemption that prohibits them from obtaining certain positions have been found working in those jobs at other facilities because they have concealed those conditions from the licensee. This section will allow the Department to deny or rescind an exemption if it cannot obtain honest statements supported by the individual’s criminal history or if it becomes aware

that the individual did not truthfully reveal the specifics of their criminal record history or conditional exemption to a licensee to obtain a job.

Sections 102370.1(h)(2) and (h)(2)(A)

Specific Purpose:

The specific purpose of these sections is to allow the Department to deny an exemption request if the individual is currently on probation or parole.

Factual Basis:

Probation and parole are terms of a criminal sentence. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed their criminal sentence. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation) are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Section 102370.1(i)

Specific Purpose:

The specific purpose of this section is to introduce the following seven subsections that list specific criteria that an individual's criminal history must meet in order for the Department to consider granting a criminal record exemption.

Factual Basis:

This section is necessary to protect the health and safety of clients in care and to provide for exemption applicants and the general public the specific criteria an individual's criminal history must meet before the Department will consider granting an exemption.

Health and Safety Code Section 1596.871(f) gives the Department authority to grant a criminal record exemption if the Department has substantial and convincing evidence to support a reasonable belief that the person convicted of a crime is of good character.

The proposed exemption criteria, outlined in the following subsections, reflect existing policies and criteria, that have been used and refined for approximately 25 years. This experience has shown that the exemption criteria combined with the requirements of Section 102370.1(c)(3) is substantial and convincing evidence of good character. This formula provides the best protection for community care clients while also providing a standardized formula to ensure uniformity and equity in the exemption evaluation process.

The specific crime categories and the required years since the last conviction, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions, the more years are required since the last period of probation or parole before the Department will consider granting an exemption. All required time periods begin after the individual has completed their most recent period of incarceration, probation or parole.

Section 102370.1(i)(1)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent misdemeanor, one year must lapse since the most recent period of incarceration or probation before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation is a part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation. An individual should demonstrate steady employment and noncriminal activity on their own for at least one year since incarceration or completing probation without it being required for compliance with their probation term and without the supervision of a probation officer.

Requiring one year beyond incarceration or probation without subsequent criminal activity for an individual who has been convicted of one nonviolent misdemeanor is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of one nonviolent misdemeanor may not pose a threat to the general public, but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, one year since completing probation is minimal and vital. If an individual can demonstrate one year since incarceration or probation without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 102370.1(i)(2)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent misdemeanors, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal

record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. An individual convicted of nonviolent misdemeanors may not pose a threat to the general public but, given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent criminal activity is minimal and vital. If an individual can demonstrate four years without criminal activity, it is a good indication that he/she has been rehabilitated.

Section 102370.1(i)(3)

Specific Purpose:

The specific purpose of this section is to state that if individual has been convicted of one or more violent misdemeanor, 15 consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least 15 years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring 15 years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one or more violent misdemeanors is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The 2002 U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1994, hereinafter referred to as the U.S. Department of Justice's most recent report on prisoner recidivism, states that 61.7% of those with a prior violent arrest were rearrested within three years of their release [Page eight, Column one]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of a violent crime and/or multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent misdemeanor would not pose a harm to clients in care. If an individual can demonstrate 15 years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 102370.1(i)(4)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of one nonviolent felony, four consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least four years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring four years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of one nonviolent felony is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. These statistics are alarming enough for the general public. But, given the fact that individuals with criminal histories are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, four years without subsequent convictions for an individual convicted of a felony is minimal and vital. If an individual can demonstrate four years without subsequent criminal activity, it is a good indication that he/she may not fall into the pattern of nearly 70% of other released prisoners.

Section 102370.1(i)(5)

Specific Purpose:

The specific purpose of this section is to state that if an individual has been convicted of two or more nonviolent felonies, ten consecutive years must lapse since the most recent period of incarceration, probation or parole before the Department will consider granting a criminal record exemption.

Factual Basis:

Probation and parole are part of a criminal sentence that include terms and conditions that the sentencing court finds to be necessary for rehabilitation. Requiring that an individual complete probation or parole is necessary because the Department cannot determine if the individual has been rehabilitated if they have not yet successfully completed this process. Until the individual has completed all terms of their sentence, the Department does not have a reasonable basis to believe that they are rehabilitated. Steady employment and noncriminal activity (generally considered indicators of rehabilitation), as well as counseling programs are terms of probation or parole. An individual should demonstrate steady employment and noncriminal activity on their own for at least ten years without it being required for compliance with their probation or parole terms and without the supervision of a probation or parole officer.

Requiring ten years without subsequent criminal activity, beyond incarceration, probation or parole, for an individual who has been convicted of two or more nonviolent felonies is necessary because it is one method of assuring that the individual has been rehabilitated. This assurance is necessary because of the extreme vulnerability of the clients in care. The U.S. Department of Justice's most recent report on prisoner recidivism states that an estimated 67.5% of the 272,111 released prisoners tracked were rearrested within three years after their release from prison [Page three, Column one, under "Recidivism Rates at Different Lengths of Time After Release"]. This report also contains statistics that show that the longer the individual's prior record, the greater the likelihood that the recidivating prisoner will recommit another crime soon after release (Page ten, Column two, under Number of Prior Arrests).

These statistics indicate that there is a high probability that individuals convicted of multiple crimes will re-offend. Given the fact that these individuals are requesting a exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of two or more nonviolent felonies would not pose a harm to clients in care. If an individual can demonstrate ten years without subsequent criminal activity, it is a good indication that he/she has been rehabilitated.

Section 102370.1(i)(6)

Specific Purpose:

The specific purpose of this section is to state that the Department will not consider granting an exemption for an individual who has been convicted of any violent felony.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. An individual convicted of a violent felony has committed a serious crime that involves violence against a person.

The U.S. Department of Justice's most recent report on prisoner recidivism states that 61.7% of those with violent offenses were rearrested within three years of their release (Page eight, Column one). This report also states that the odds of a released violent offender being rearrested for another violent crime are 30% greater than the odds of a nonviolent offender being arrested for a violent crime (Page ten, Column two).

These statistics indicate that there is a high probability that individuals convicted of a violent crime will re-offend. Given the fact that these individuals are requesting exemptions to care for dependent, vulnerable, community care clients that the Department has been entrusted to protect, the Department cannot take the risk that an individual convicted of a violent felony would not pose a harm to clients in care.

Section 102370.1(i)(7)

Specific Purpose:

The specific purpose of this section is to state that if an individual provides proof that their probation was informal or unsupervised, the period of lapsed time required in Sections 102370.1(i)(1) through (5) will begin from the last date of conviction.

Factual Basis:

In granting a criminal record exemption the Department must determine which individuals pose the least risk of harm to clients in care. If the court determined that the individual did not pose a

significant enough threat to society, that the supervision of a probation officer was not warranted, the Department believes that this individual would not pose a risk of harm to clients in care and will calculate the lapsed time from the date of the last conviction.

Section 102370.1(j)

Specific Purpose:

The specific purpose of this section is to state that an individual's failure to meet the criteria specified in Section 102370.1(i)(1) through (6) is a rebuttable presumption that the individual is not of such good character as to justify the issuance of a criminal record exemption.

Factual Basis:

The specific crime categories and the required years since the last period of incarceration, probation or parole varies depending on the type of crime and the number of convictions. In general, the more serious the crime and/or the more convictions an individual has, the more years are required since completion of probation or parole before the Department will consider granting an exemption. If an individual cannot demonstrate these minimal years without a subsequent conviction, then the Department cannot be assured that the individual has been rehabilitated or would not pose a threat to the health and safety of clients in care.

The presumption that an individual who does not meet the exemption criteria is not of good character is rebuttable to allow for individualized situations where an individual who does not meet the exemption criteria but demonstrates substantial and convincing evidence of good character may be granted an exemption.

Section 102370.1(k) and Handbook Sections 102370.1(k)(1) through (52)

Specific Purpose:

The specific purpose of Section 102370.1(k) is to specify in regulation that an individual who has been convicted of any crime specified in Health and Safety Code Section 1596.871(f) will not be granted a criminal record exemption. Also, a handbook is added.

Factual Basis:

Section 102370.1(k) is necessary to implement and clarify the provisions of Health and Safety Code Section 1596.871(f)(1) which prohibits the Department from granting exemptions to individuals who have been convicted of specific crimes. This non-exemptible crimes list, previously located in Section 102370.1(b) has been updated to reflect current statute. Handbook Sections 102370.1(k)(1) through (52) are added to provide the Health and Safety Code referenced in Section 102370.1(k) for ease of use.

The crimes listed in statute, cross-reference numerous other crimes and therefore appears to be a shorter list of crimes than those listed in this proposed section. Proposed Handbook Sections

102370.1(k)(1) through (52) include all cross-referenced crimes making the list longer but more user friendly.

Section 102370.1(l)

Specific Purpose:

The specific purpose of this section is to place into regulation the criteria the Department uses to grant a criminal record exemption on its own motion, referred to as a “simplified exemption.”

Factual Basis:

This section is necessary to implement Health and Safety Code Section 1596.871(c)(3) which permits the Department to grant an exemption on its own motion. Simplified exemptions do not require the submission of documents as evidence of rehabilitation and do not involve the affected individual in any way. Simplified exemptions involve only the review of the criminal record history, therefore specific criteria for reviewing the history must be in regulation. If an individual’s history does not meet the criteria, then the individual must apply for an exemption and the standard exemption process outlined in Sections 102370.1(c) through (k).

A Department team, that included the Director of Social Services, Deputy Director of Community Care Licensing and Chief Counsel, reviewed the existing simplified exemption guidelines and practices. The team devoted a great deal of time to evaluating the simplified exemption criteria and agreed that only those persons convicted of one nonviolent misdemeanor would qualify for a simplified exemption.

Section 102370.1(l)(1)

Specific Purpose:

The purpose of this section is to state that if the individual’s criminal record shows a pattern of criminal activity, then the Department will not grant a simplified exemption but will instead require further information before an exemption decision is rendered. Per Section 102370.1(m) of these proposed regulations, the Department will have the individual go through the standard exemption process. With the information obtained through the standard exemption process, the Department can determine if the individual represents a threat to the health and safety of clients.

Factual Basis:

This section is necessary because if the individual's criminal record shows a pattern of criminal activity in addition to the one nonviolent misdemeanor conviction, this would indicate a need for a close evaluation of the individual to ensure that they have been rehabilitated and that clients would be protected. The simplified exemption process does not include this type of evaluation, therefore the standard exemption process would be more appropriate.

Sections 102370.1(l)(2) through (4)

Specific Purpose:

The purpose of these sections is to state that only if the individual has no more than one conviction and that if that conviction is a misdemeanor and it has been at least five years since the completion of the most recent period of incarceration or probation will the Department consider granting a simplified exemption.

Factual Basis:

The Department has determined that one conviction for a nonviolent misdemeanor does not pose an immediate threat to the health and safety of clients. In addition, if it has been five years since that conviction or last period of incarceration or probation, then a full evaluation of the individual to determine rehabilitation is not required and a simplified exemption may be considered.

Section 102370.1(m)

Specific Purpose:

The specific purpose of this section is to state that even though an individual's criminal history meets the simplified exemption criteria, the Department may require an individual to go through the standard exemption process.

Factual Basis:

This section is necessary because the Department must have the option of requiring that an individual go through the standard exemption process if the Department feels it is necessary to protect the health and safety of clients. An example would be a situation where an individual's convictions met the simplified exemption criteria but additional arrests without convictions that need to be investigated also appear on the rap sheet.

Section 102370.1(n) et seq. [Renumbered from Section 102370.1(h) et seq.]

Specific Purpose:

The specific purpose of this amendment is to renumber Section 102370.1(h) and to make grammatical changes.

Factual Basis:

Section 102370.1(h) is renumbered to Section 102370.1(n) for consistency of format with the restructuring of Section 102370.1. Grammatical changes are made for clarity.

Section 102370.1(o)

Specific Purpose:

The specific purpose of this section is to state how long an excluded individual will remain excluded.

Factual Basis:

This section is necessary so that the licensee and the affected individual will know the time limit of an exclusion based upon a denied exemption for a conviction as outlined in Health and Safety Code Section 1596.8897 and the procedure to follow when that time limit expires. This section establishes the limits for an individual who was excluded due to a denied exemption and for an individual who was excluded because he/she was convicted of a non-exemptible crime.

Section 102370.1(o)(1)

Specific Purpose:

The purpose of this section is to state that an individual may not reapply for an exemption after a denial for two years if the underlying crime is exemptible. This section also clarifies that the Department will cease reviewing a subsequent exemption request if that request is within two years from the last exemption denial or effective date of the decision and order upholding the exemption denial if the denial was appealed.

Factual Basis:

This section is necessary so that an individual whose request for an exemption for an exemptible crime know that length of time he/she must wait before re-applying for an exemption. This is necessary so that an individual's subsequent exemption request coincides with the exclusion limit set forth in Section 102370.1(o). In addition, the two year time period will allow the individual to engage in activity that would further demonstrate rehabilitation and provide an incentive to do so.

Section 102370.1(o)(2)

Specific Purpose:

The purpose of this section is to clarify that individual may not be present in a licensed facility unless the petition or an exemption is granted.

Factual Basis:

This section is necessary because the individual may have been allowed to work or be in a facility while their initial exemption request was being reviewed. The individual may mistakenly believe that as soon as his/her petition for reduction in penalty is submitted that he/she may begin to work or be present in a licensed facility.

Section 102370.1(o)(3)

Specific Purpose:

The purpose of this section to clarify that if a person with a denied exemption reapplies for an exemption after the required time period, the Department has the discretion to grant or deny the subsequent exemption request.

Factual Basis:

This section is necessary so an individual with a denied exemption does not assume that a reapplication, after the required two year wait, is a guarantee of an exemption. This section clarifies that the Department retains the discretion to deny a subsequent exemption request if the Department determines that rehabilitation has still not occurred.

Section 102370.1(o)(4)

Specific Purpose:

The purpose of this section is to specify conditions and requirements for a petition for reinstatement or reduction in penalty.

Factual Basis:

This section is necessary so that the individual is fully informed of what is expected and required if he/she submits a petition for reinstatement or reduction in penalty. Of particular importance is informing the individual that a new set of fingerprints must be submitted. Without this information an individual may assume that because his/her fingerprints were previously submitted that a new set is not necessary.

Section 102370.1(p) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that individuals with a criminal record exemption may request a transfer of their exemption and the condition under which that transfer is allowed.

Factual Basis:

These sections, with slight modifications for clarity, were previously at Section 102370.1(f) et seq., with the exception of new Section 102370.1(p)(1) which is being adopted for consistency with existing regulations.

It is necessary to require that all exemption transfer requests be on the LIC 9188 so that the information provided for the request is consistent and complete. The Department has found that transfer requests that are not on the LIC 9188 are incomplete and require that the Department make follow-up phone calls to obtain the information or result in a denial of the transfer request.

The LIC 508 was revised to coincide with the new policy that if a person knowingly makes a false statement about his/her criminal history, his/her exemption request will be denied. The previous version of this form stated that the exemption request may be denied.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9188, Criminal Record Exemption Transfer Request, Rev. 3/02 and the LIC 508, Criminal Record Statement, Rev. 1/03. These forms are not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, these forms are available to the public from the Department at (916) 657-2586.

Section 102370.1(q) et seq.

Specific Purpose:

The specific purpose of these sections is to state the factors the Department will consider in determining whether to approve an exemption transfer.

Factual Basis:

These sections are necessary because the Department must review the appropriateness of the transfer. The original exemption may have been granted with certain conditions or provisions that cannot be met at the facility to which the exemption is being transferred. For example if the individual was convicted of a DUI violation, the exemption might have a condition that the individual not drive clients and the new job would require driving. Or, an individual may have a conviction of contributing to the delinquency of a minor that was exempted because the

individual would be working in a care facility for the elderly. This type of exemption may not be appropriate to transfer to a group home for juveniles. Most importantly, because an exemption transfer request generates a review of the exemption, the Department must take this opportunity to determine if the exemption was appropriately granted initially and if it meets current law and regulation before a transfer is considered.

Section 102370.1(r)

Specific Purpose:

The specific purpose of this section is to require that the Department notify the licensee and the individual, in writing, if the transfer is denied. This section also requires the Department to provide the affected individual with the right to contest the denial.

Factual Basis:

This section was previously Section 102370.1(g). This section is amended to include a phrase that the Department will notify the licensee and the individual, in writing, of a transfer denial. This phrase is necessary to specify for the licensee and the individual the Department's responsibility.

Section 102370.1(s) et seq.

Specific Purpose:

The specific purpose of these sections is to state that the Department may rescind an exemption.

Factual Basis:

The Department conducts a second level review of all exemptions involving a felony and periodic quality assurance reviews of all exemptions. The purpose of the reviews is to ensure that the exemption analyst obtains and adequately evaluates all documentation available and makes an exemption decision that will protect the health and safety of clients. If a review reveals otherwise, the Department must be able to rescind that exemption.

Section 102370.1(t) et seq.

Specific Purpose:

The specific purpose of these sections is to specify that the Department may rescind an exemption if the Department obtains evidence that the individual engaged in conduct which was inconsistent with the good character requirements necessary for an exemption. Such conduct may include violation of licensing laws or regulations, conduct that would pose a threat to the health and safety of a client, nondisclosure of a conviction, lack of rehabilitation, and conviction of a subsequent crime.

Factual Basis:

These sections are necessary to specify what situations will cause the Department to rescind a criminal record exemption. This is necessary to provide clarity to an individual with a criminal record exemption and the general public of what types of conduct are inconsistent with the good character requirements of a criminal record exemption. An exemption is granted based on the assumption that the individual is rehabilitated and of good character not only for the instance that the exemption is granted but for the entire time they are associated with a licensed facility. It must be stated that any lack of rehabilitation or behavior that may indicate that the individual lacks good character will be cause for the Department to rescind the exemption.

Section 102370.1(u) et seq.

Specific Purpose:

The specific purpose of these sections is to state that if the Department rescinds an exemption, the Department will inform the licensee and the affected individual, in writing, and initiate the appropriate administrative action.

Factual Basis:

These sections are necessary to specify the Department's responsibility to notify the licensee and the affected individual, in writing, when an exemption is rescinded. Further, these sections are necessary to allow the Department to initiate the appropriate administrative action because a rescinded exemption is a severe action that could result in a license revocation or an immediate exclusion from the facility.

Section 102370.1(v)

Specific Purpose:

The specific purpose of this section is to specify that when the Department learns that an individual with a criminal record clearance or an exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate the appropriate administrative action to protect the health and safety of clients.

Factual Basis:

The Department must be able to immediately initiate an administrative action against an individual with a subsequent conviction if it determines that their continued licensure, employment or presence in the facility could pose a threat to the health and safety of clients. The administrative action process such as revocation of the license (Health and Safety Code Section 1596.885) or exclusion action process (Health and Safety Code Section 1596.8897) will provide the individual with a hearing to contest the Department's action.

Section 102370.2(b)(1)

Specific Purpose:

The purpose of these amendments to add clarifying language and to delete the phrase “prior to the individual’s employment, residence or initial presence in the facility”.

Factual Basis:

The clarifying language is necessary so it cannot be assumed that the CACI check is a fingerprint based check. With the requirement at Section 102370.2(b) that individuals must have a CACI clearance prior to employment, residence or presence, the language that states when the CACI check must be submitted is unnecessary.

Section 102395(a)(1) et seq.

Specific Purpose:

The specific purpose of this amendment is to convert this section from a citation for failure to submit fingerprints to a citation if anyone required to be fingerprinted has not obtained a Department of Justice clearance or a criminal record exemption, requested a transfer of a clearance or request and be approved for an exemption prior to their employment, residence or initial presence in the facility.

Factual Basis:

This amendment is necessary because with the new requirement of a Department of Justice clearance or criminal record exemption prior to an individual’s employment, residence or initial presence in the facility [Section 102370(d)], this section must be amended to coincide with that requirement.

Section 102416(d) et seq.

Specific Purpose:

The purpose of these sections is to place the requirement that all individuals subject to a criminal record background check obtain a Department of Justice clearance or criminal record exemption, request a transfer of a clearance or request and be approved for transfer of a criminal record exemption prior to employment or initial presence in a child care facility in the Personnel Requirements section.

Factual Basis:

Section 102370(d) requires that individuals have a Department of Justice clearance or criminal record exemption, request a transfer of a clearance or request and be approved for a transfer of a criminal record exemption prior to employment or initial presence in a child care facility. It is necessary to duplicate this requirement in the Personnel Requirements section for emphasis and

consistency with other like regulation sections.

Sections 102416(e) and (f) [Renumbered from Sections 102416(d) and (e)]

Specific Purpose/Factual Basis:

Sections 102416(d) and (e) are being renumbered to Sections 102416(e) and (f) to allow for the adoption of new Section 102416(d).

Sections 102416.1 (Title) and 102416.1(a)

Specific Purpose:

These sections are being adopted to add a new section that would require that family child care providers maintain personnel records on all employees and volunteers.

Factual Basis:

Specific items listed [Sections 102416.1(a)(4), (6), (10), (12) and (b)(1)(A) and (B)] are required by other regulation sections. However, family child care regulations have never required that those items be located in a specific place or that other identifying information be maintained at all. When a Licensing Program Analyst conducts a triennial evaluation or a complaint investigation where staff coverage or culpability is an issue, the analyst must be able to quickly access all required information. Many complaint investigations have not been resolved because the Department could not determine who was on duty at the time of an alleged violation or could not contact a former employee or volunteer as a witness to an alleged violation. Requiring family child care licensees to place this information in a personnel record is consistent with other regulation sections except small family homes. Small family homes is the only exception because this licensee category is less likely to hire staff.

The remaining items [Sections 102416.1(a)(1) through (3), (5), (7) through (9), and (11)] not required by other family child care regulation sections are identical to the requirements in other license category personnel regulation sections and are therefore necessary here.

Section 102416.1(a)(1)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's full name in the employee's personnel record.

Factual Basis:

This section is necessary for complete identification of the individual. Employment application forms for any type of job require an individual's complete name. In a child care industry where staff are commonly referred to with endearing nicknames, it is particularly necessary that the individual's complete name be on record.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(2)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's driver's license number, if they are to transport children, in the employee's personnel record.

Factual Basis:

This section is necessary to ensure that all drivers have a current driver's license. It is logical that if an individual's job duties require that they have a specific certification or license to perform their job, that the number, if not a copy, of the certification or license be noted in their personnel record. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(3)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's date of employment in the employee's personnel record.

Factual Basis:

This section is necessary so that the Department can definitively determine when an individual began their employment at the facility. This information is particularly necessary for the Department to determine if a citation and civil penalty is warranted for failure to submit fingerprints prior to an individual's employment. Additionally this information may be needed to aid in a complaint investigation. A review of the personnel records with the date of employment of all staff will allow the investigator to narrow their interviews to individual's who were employed at the facility on the date of an alleged violation. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(4)

Specific Purpose:

The specific purpose of this section is to require that the personnel record contain the employee's date of birth.

Factual Basis:

Section 102352 (Title 22, Division 12, Chapter 3) defines an assistant provider, in part, as a person at least 14 years of age. This section is necessary to ensure that all employees are at least 14.

Section 102416.1(a)(5)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's current home address and phone number in the employee's personnel record.

Factual Basis:

This section is necessary so the Department may contact the individual to aid in the evaluation or investigation of the child care home. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(6)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain documentation that the employee has completed training on preventative health practices in the employee's personnel record.

Factual Basis:

Section 102416(c) requires that specified personnel complete training on preventative health practices as required by Health and Safety Code Section 1596.866. This section is necessary so that evidence of completion of that training can be easily obtained and reviewed.

Section 102416.1(a)(7)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a record of the employee's past experience including types of employment and former employers in the employee's personnel record.

Factual Basis:

Though prior experience is not required to be an assistant provider, this information is necessary in the event the employee's experience is an issue. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(8)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's duties in the employee's personnel record.

Factual Basis:

This section is necessary so that the individual and the Department can have a record of what the individual's job duties are. This is a standard element commonly found on employment application forms for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(9)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain the employee's termination date if no longer employed in the employee's personnel record.

Factual Basis:

This is a standard element commonly found in personnel records for any type of job.

This requirement is consistent with other license category personnel regulation sections.

Section 102416.1(a)(10)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a copy of the Notice of Employee Rights [LIC 9052 (Rev. 3/03)], signed and dated by the employee, in the employee's personnel record.

Factual Basis:

Section 102416(a)(2) requires that a copy of the signed Notice of Employee Rights [LIC 9052 (Rev. 3/03)] be retained in the employee's personnel record. Prior to this amendment licensees were not required to maintain personnel records.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 9052, Notice of Employee Rights, Rev. 3/03. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102416.1(a)(11)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a signed criminal record statement in the employee's personnel record.

Factual Basis:

Section 102370(d) (Title 22, Division 12, Chapter 3) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. This section clarifies where that statement must be maintained.

Section 102416.1(a)(12)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain documentation of a criminal record clearance or exemption in the employee's personnel record.

Factual Basis:

Section 102370(i) (Title 22, Division 12, Chapter 3) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in an employee's personnel file.

Sections 102416.1(b) and (b)(1)

Specific Purpose:

The specific purpose of these sections is to list all personnel records that must be maintained on a volunteer.

Factual Basis:

These sections are necessary for clarity. All documents listed are required by other sections. These sections repeat those requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Section 102416.1(b)(1)(A)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain a signed criminal record statement in the volunteer's personnel record.

Factual Basis:

Section 102370(d) (Title 22, Division 12, Chapter 3) requires that all individuals subject to a criminal record review sign a criminal record statement prior to employment or initial presence in a facility. This section clarifies where that statement must be maintained.

Section 102416.1(b)(1)(B)

Specific Purpose:

The specific purpose of this section is to require that the licensee maintain documentation of a criminal record clearance or exemption in the volunteer's personnel record.

Factual Basis:

Section 102370(i) (Title 22, Division 12, Chapter 3) requires that this documentation be kept in the individual's personnel file. This section repeats that requirement so that the licensee has an inclusive list, in one location, of all documents that must be included in a volunteer's personnel file.

Section 102416.1(c)

Specific Purpose:

The specific purpose of this section is to require that the licensee retain all personnel records for at least three years after the employee or volunteer is terminated or otherwise no longer associated with the facility.

Factual Basis:

This section is necessary so that the Department may review the records of former employees/volunteers in the event the records are needed to aid a complaint investigation. The three year record retention requirement is consistent with all other personnel record retention requirements in other license category regulations as well as the retention requirement for children's records.

Section 102416.1(d)

Specific Purpose:

The specific purpose of this section is to require that all personnel records be maintained at the child care home and that the records be available to the licensing agency for review

Factual Basis:

This section is necessary so that the Department may have immediate access to the records when unannounced evaluations or investigations are being conducted.

Sections 102417(r) and (r)(1)

Specific Purpose:

The specific purpose of these sections is to require that when a licensee receives a notice from the Department to remove an individual, the licensee does so immediately.

Factual Basis:

The Department is mandated by law to send a notice ordering the removal of a person convicted of certain crimes. The crimes are listed in Section 102370.1(a). The Department also must order the removal of any person it determines may pose a risk to the health and safety of clients in care.

Section 102417(r)(2)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual has been removed or excluded from the family child care home by providing copies of the LIC 995B.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995B, Addendum to Notification of Parents Rights (Regarding Removal/Exclusion), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102417(r)(2)(A)

Specific Purpose:

The specific purpose of this regulation is to require that licensees notify parents or authorized representatives that an individual, who has been excluded or removed, may return to the family child care home by providing copies of the LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995C, Addendum to Notification of Parents Rights (Regarding Reinstatement), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102417(r)(3)

Specific Purpose:

The specific purpose of this regulation is to require that licensees obtain a signed and dated receipt from parents or authorized representatives that acknowledges that they received a copy of the LIC 995B or LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

Section 102417(r)(4)

Specific Purpose:

The specific purpose of this regulation is to require that licensees maintain copies of signed and dated LIC 995B or LIC 995C and that these copies be made available to the Department upon request.

Factual Basis:

This section is necessary to enable the Department to fulfill its statutory mandate to monitor facilities and ensure that the licensee is complying with the requirement that parents/guardians receive copies of the LIC 995B or LIC 995C.

Section 102419(h)

Specific Purpose:

The specific purpose of this section is to require that the licensee provide a copy of the LIC 995B, the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion), that is still in effect, to new parents/guardians.

Factual Basis:

This section is necessary so that parents/guardians new to the day care home are aware that someone has been excluded or removed from the home. Section 102370.1(b) requires that the licensee provide parents/guardians, of all children in care, a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion). If this requirement is not part of the admission procedures as well, it is conceivable that a licensee could begin providing care to all new clients and interpret Section 102370.1(b) as not being applicable to these new clients because they were not "in care" when the notice from the Department was received.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995B, Addendum to Notification of Parents Rights (Regarding Removal/Exclusion), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102419(h)(1)

Specific Purpose:

The specific purpose of this section is to require that upon notice from the Department that an excluded/removed individual may return to the facility, the licensee notify parents/ guardians using the LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

The Department is incorporating by reference, pursuant to the California Code of Regulations, Title 1, Chapter 1, Section 20, the LIC 995C, Addendum to Notification of Parents Rights (Regarding Reinstatement), Rev. 3/01. This form is not printed in the California Code of Regulations or the Department's Manual of Policies and Procedures because it would be cumbersome and impractical. However, this form is available to the public from the Department at (916) 657-2586.

Section 102419(i)

Specific Purpose:

The specific purpose of this regulation is to require that licensees obtain a signed and dated receipt from parents or authorized representatives that acknowledges that they received a copy of the LIC 995B or LIC 995C.

Factual Basis:

This section is necessary to implement Health and Safety Code Sections 1596.871 and 1596.8712.

Section 102419(j)

Specific Purpose:

The specific purpose of this regulation is to require that licensees maintain copies of signed and dated LIC 995B or LIC 995C and that these copies be made available to the Department upon request.

Factual Basis:

This section is necessary to enable the Department to fulfill its statutory mandate to monitor facilities and ensure that the licensee is complying with the requirement that parents/guardians receive copies of the LIC 995B or LIC 995C.

b) Identification of Documents Upon Which Department Is Relying

- Senate Bill (SB) 1984, Chapter 1267, Statutes of 1994
- SB 1992, Chapter 819, Statutes of 2000
- U.S. Department of Justice, Bureau of Justice Statistics, Special Report, Recidivism of Prisoners Released in 1983 (referred to in these Statement of Reasons as the U.S. Department of Justice most recent report on prisoner recidivism)
- California Department of Justice, Child Protection Program Brochure, dated 2000

c) Local Mandate Statement

These regulations do impose a mandate upon local agencies but not on school districts. The mandate is not required to be reimbursed pursuant to Section 17500, et seq. of the Government Code because implementation of the regulations will, if anything, result in negligible costs.

d) Statement of Alternatives Considered

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Significant Adverse Economic Impact On Business

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.