Amend Section 80001 to read:
Post-hearing: Renumber Sections 80001(c)(1) through (c)(19) to Sections 80001(c)(2) through (c)(20), respectively; and renumber Section 80001(d)(6) to (c)(1) and amend; amend 80001(c)(20); renumber Sections 80001(d)(7) through (9) to Sections 80001(d)(6) through (8), respectively; and amend Section 80001(r)(1) to read:

80001 DEFINITIONS (Continued) 80001

(a) through (b) (Continued)

(c)~~(d)(6)~~(1) "~~Department of Justice~~ California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(1) through (5) renumbered to (2) through (6)

(~~6~~7) "Child Abuse Central Index" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.

(~~7~~8) "Child Abuse Central Index Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match or the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.

(~~8~~9) through (1~~7~~8) (Continued)

(1~~8~~9) "Conviction" means:

(A) A criminal conviction in California; or

(B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(~~19~~20) "Criminal Record Clearance" means an individual has a California ~~Department of Justice~~ clearance and an FBI clearance.

(d) (1) through (5) (Continued)

[(d)(6) renumbered to Section 80001(c)(1).]

(~~7~~6) through (~~9~~8) (Continued)

(e) (Continued)

(f) (1) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(g) through (l) (Continued)

(m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

(2) (Continued)

(n) through (q) (Continued)

(r) (1) "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, ~~that period of time, together with any~~ education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service~~, which assist an individual in reestablishing good character~~.

(2) (Continued)

(3) (Continued)

(s) (Continued)

(2) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1522(c)(4), if the individual's criminal history meets specific criteria established by Department regulation.

(3) through (8) (Continued)

(t) through (z) (Continued)

Authority Cited:	Sections 1502, 1522.41(j), 1524(e), 1530, and 1530.9, Health and Safety Code.
Reference:	Sections 1501, 1502, 1502(a)(7) and (8), 1502.5, 1503, 1503.5, 1505, 1507, 1508, 1509, 1511, 1520, 1522, 1524, 1524(e), 1525, 1525.5, 1526, 1527, 1530, 1530.5, 1531, 1531.1, 1533, 1534, 1536.1, 1537, 1538.5, 1550, 1551, 1556, 1569.699(a), 1797.196, and 11834.11, Health and Safety Code; Sections 5453, 5458, 11006.9, and 17736(a) and (b), Welfare and Institutions Code; and 29 CFR 1910.1030.

Amend Section 80019 to read:
Post-hearing: Amend Sections 80019(d)(1)(A), (e) and (e)(1), and renumber Sections 80019(m) and (m)(1) to (l) and (l)(1) and amend; repeal Sections 80019(d)(2)(B) and (B)1. and 80019(l) and (l)(1) to read:

80019 CRIMINAL RECORD CLEARANCE 80019

(a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1522(b) and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.

HANDBOOK BEGINS HERE

(1) (Continued)

(2) Section 1522(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons: (Continued)

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) and (F) (Continued)

HANDBOOK ENDS HERE

(b) The following persons are exempt from the requirement to submit fingerprints: (Continued)

(6) (Continued)

(7) (Continued)

(D) A volunteer, if all of the following apply:

1. The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

2. The volunteer is never left alone with clients.

3. The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene other than washing of hands.

(8) and (9) (Continued)

(d) All individuals subject to a criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

(1) A person signing the LIC 508 must:

(A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 80019(i) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.

(B) If convicted of a crime other than a minor traffic violation, provide information regarding the conviction.

(2) The licensee shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with the requirements of Section 80019(e), prior to the individual's employment, residence, or initial presence in the community care facility. (Continued)

~~(B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.~~

~~1. If the Department determines that the licensee or applicant has violated Section 80019(d)(1)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the Department determines that the licensee or applicant is in compliance with this section or until a disciplinary proceeding is completed.~~

(e) ~~Prior to employment, residence or initial presence in a licensed facility,~~ ~~a~~All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1522 shall prior to working, residing or volunteering in a licensed facility:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by the Department or

(2) Request a transfer of a criminal record clearance as specified in Section 80019(f) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 80019.1(r), unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the facility.

(f) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:

(1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.

(3) Any other documentation required by the Department [e.g., Criminal Record Statement - LIC 508, (Rev. 1/03) or for Foster Family Homes, Small Family Homes and Certified Family Homes an LIC 508D (Rev. 1/03) which are incorporated by reference, and job description].

HANDBOOK BEGINS HERE

(4) (Continued)

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(g) Violation of Section 80019(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.

(1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1522.

(h) Violation of Section 80019(e) may result in a denial of the license application or suspension and/or revocation of the license.

(i) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1522(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than $300, and an exemption pursuant to Section 80019.1(a) has not been granted, the Department shall take the following actions: (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1558, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility. (Continued)

(j) through (k) (Continued)

~~(l) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.~~

~~(1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:~~

~~(A) The law enforcement agency and court involved;~~

~~(B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;~~

~~(C) The individual's current and pending legal involvement; and~~

~~(D) The individual's current address and phone number.~~

(~~m~~l) The Department may seek verification <u>from a law enforcement agency or court</u> of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation <u>from a law enforcement agency or court</u> of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

Authority Cited: Section 1530, Health and Safety Code.

Reference: Sections 1503.5, 1505, 1508, 1522, 1531, 1533, 1538, 1540, 1540.1, 1541, 1547, 1549, and 14564, Health and Safety Code.

Amend Section 80019.1 to read:
Post-hearing; Amend Sections 80019.1(b)(1), (d) and (d)(1)-(3), (e)(6)(A), (q)(3), (r)(1), (w)(2), and (x) to read:

80019.1 CRIMINAL RECORD EXEMPTION 80019.1

(a) The Department will notify a licensee to act immediately to remove from the facility or bar from entering the facility any person described in Sections 80019.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1522(c)(3);

(4) Any person who has been convicted of any crime specified below:

(A) Battery

(B) Shooting at Inhabited Dwelling

(C) Corporal Injury on Spouse/Cohabitant

(D) Discharging Firearm with Gross Negligence

(E) Exhibiting Weapon/Firearm

(F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G) Criminal Threat to Harm or Injure Another Person

(H) Cruelty to Animals

(I) Willful Harm or Injury to Child; or

(5) Any other person ordered to be removed by the Department.

(b) In addition to the requirements of Section 80019.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.

(1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. ~~12/02~~ 9/03), Removal Confirmation - Denial, LIC 300B (Rev. ~~12/02~~ 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. ~~12/02~~ 9/03), or Removal Confirmation – Nonexemptible, LIC 300D (Rev. ~~12/02~~ 9/03).

(c) After a review of the criminal record transcript, the Department may grant an exemption if: (Continued)

(d) To request a criminal record exemption, ~~individuals~~ a licensee or license applicant must submit information that indicates that ~~he/she~~ the individual meets the requirements of Section 80019.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within ~~thirty (30)~~ forty five (45) days of the date of the Department's notice.

(1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 80019.1(e).

(2) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

(3) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may deny the exemption request.

(4) Except for certified foster parents, individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:

(A) Chooses not to request the exemption and

(B) Terminates the individual's employment because of the individual's criminal history, or

(C) Removes the individual who resides in the facility because of the individual's criminal history.

(e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

(1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others. (Continued)

(6) Character references.

(A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. ~~9/02~~ 7/03]). (Continued)

(8) Evidence of honesty and truthfulness as revealed in exemption application documents.

(A) Documents include, but are not limited to:

1. A Criminal Record Statement (LIC 508, [Rev. 1/03] or for Foster Family Homes, Small Family Homes and Certified Family Homes an LIC 508D [Rev. 1/03]) and (Continued)

(9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

(f) The Department shall also consider the following factors in evaluating a request for an exemption:

(1) Facility and type of association.

(2) The individual's age at the time the crime was committed.

(g) through (i) (Continued)

(j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:

(1) Makes a knowingly false or misleading statement regarding:

(A) Material relevant to their application for a criminal record clearance or exemption,

(B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

(C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(2) Is on probation or parole.

(A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 80019.1(j)(2).

(B) Section 80019.1(j)(2) does not apply to Certified Family Homes.

(k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 80019.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 80019.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6) The individual has not been convicted of a violent felony.

(7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 80019.1(k)(1) through (5) above shall begin from the last date of conviction(s).

(l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 80019.1(k)(1) through (6).

(m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1522(g)(1) of the Health and Safety Code.

HANDBOOK BEGINS HERE

Health and Safety Code Section 1522(g)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

(1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.

(2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.

(3) Penal Code Section 203 – Any mayhem.

(4) Penal Code Section 206 - Felony torture.

(5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.

(6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.

(7) Penal Code Section 215 – Carjacking.

(8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.

(9) Penal Code Section 243.4 – Sexual battery.

(10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

(11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.

(12) Penal Code Section 264.1 – Rape in concert.

(13) Penal Code Section 266 – Enticing a minor into prostitution.

(14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.

(15) Penal Code Section 266h(b) – Pimping a minor.

(16) Penal Code Section 266i(b) – Pandering a minor.

(17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.

(18) Penal Code Section 267 – Abduction for prostitution.

(19) Penal Code Section 269 – Aggravated assault of a child.

(20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).

(21) Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.

(22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.

(23) Penal Code Section 285 – Incest.

(24) Penal Code Section 286 – Sodomy.

(25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

(26) Penal Code Section 288a – Oral copulation.

(27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.

(28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

(29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.

(30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.

(31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.

(32) Penal Code Section 311.3 – Sexual exploitation of a child.

(33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.

(34) Penal Code Section 311.10 – Advertising or distributing child pornography.

(35) Penal Code Section 311.11 – Possessing child pornography.

(36) Penal Code Section 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.

(37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

(38) Penal Code Section 368 – Elder or dependent adult abuse.

(39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.

(40) Penal Code Section 451(a) or (b) – Arson.

(41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.

(42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.

(43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

(44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.

(45) Penal Code Sections 664/187 – Any attempted murder.

(46) * Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

(47) * Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.

(48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.

(49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

(50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.

(51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.

(52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

* See Health and Safety Code Section 1522(g)(1) for exception.

HANDBOOK ENDS HERE

(n) The Department shall consider granting a simplified criminal record exemption only if the individual has the criminal history profile outlined in Sections 80019.1(n)(1) through (4) below:

(1) The individual does not have a demonstrated pattern of criminal activity;

(2) The individual has no more than one conviction;

(3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

(o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.

(p) If the Department denies or cannot grant a criminal record exemption the Department shall:

(1) For initial applicants, deny the application. (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1558, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1558, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 80019.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.

(1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

(2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

(3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 8~~72~~00019.1(q)(1) above, the Department may, ~~in its discretion~~ according to the provisions in Section 80019.1 et seq., grant or deny the subsequent request for an exemption.

(4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 80019.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other

information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. ~~3/02~~ 9/03).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., Criminal Record Statement - LIC 508, [Rev.1/03] or for Foster Family Homes, Small Family Homes and Certified Family Homes an LIC 508D [Rev. 1/03] and job description).

(s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve an exemption transfer:

(1) The basis on which the Department granted the exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients in the facility where the individual wishes to transfer;

(5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or

(6) Whether the exemption meets current exemption laws or regulations.

(t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(u) At the Department's discretion, an exemption may be rescinded if it is determined that:

(1) The exemption was granted in error, or

(2) The exemption does not meet current exemption laws or regulations, or

(3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct that is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(w) If the Department rescinds an exemption the Department shall:

(1) Notify the licensee and the affected individual in writing; and

(2) Initiate ~~the appropriate~~ an administrative action.

(x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate ~~the appropriate~~ an administrative action to protect the health and safety of clients.

Authority Cited: Sections 1522 and 1530, Health and Safety Code.

Reference: Sections 1522, 1531, and 14564, Health and Safety Code.

Amend Section 80019.2 to read:
Posthearing: Amend Sections 80019.2(b) and (b)(1) to read:

80019.2 CHILD ABUSE CENTRAL INDEX (Continued) 80019.2

(b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1522(b), shall complete a Child Abuse Central Index check (LIC 198A [3/99]), prior to employment, residence or initial presence in the facility that cares for children.

(1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [3/99]), directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 80019(d). (Continued)

Authority Cited: Section 1530, Health and Safety Code.

Reference: Sections 1521, 1522, 1522.04, 1531, and 14564, Health and Safety Code.

Amend Section 80054 to read:
Post-hearing: Amend Section 80054(b), repeal Section 80054(b)(1), and renumber Section 80054(b)(1)(A) to (b)(1) to read:

80054 PENALTIES (Continued) 80054

(b) Notwithstanding Section 80054(a) above, an immediate penalty of $100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1522(b) has not obtained a ~~Department of Justice~~ California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 80019(e) prior to the individual's employment, residence or initial presence in the facility.

(1) ~~Violation of Section 80019(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.~~

~~(A)~~ The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1522.

(2) (Continued)

Authority Cited: Sections 1530 and 1548, Health and Safety Code.

Reference: Sections 1522, 1534, and 1548, Health and Safety Code.

Amend Section 80061 to read:

80061 REPORTING REQUIREMENTS (Continued) 80061

(c) The items below shall be reported to the licensing agency within 10 working days following the occurrence. (Continued)

(3) Any change of the chief executive officer of a corporation or association. (Continued)

(B) Fingerprints shall be submitted as specified in Section 80019(d). (Continued)

Authority Cited: Sections 1530 and 1538.5, Health and Safety Code.

Reference: Sections 1501, 1507, 1531, 1538.5, and 1797.196, Health and Safety Code.

Amend Section 80065 to read:
Post-hearing: Amend Section 80065(i)(1) to read:

80065 PERSONNEL REQUIREMENTS (Continued) 80065

(i) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by law or Department regulations or

(2) Request a transfer of a criminal record clearance as specified in Section 80019(f) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 80019.1(r), unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the facility. (Continued)

Authority Cited: Section 1530, Health and Safety Code.

Reference: Sections 5453 and 5458, Welfare and Institutions Code; Sections 1501, 1502(a)(7), 1522, 1531 and 1562, Health and Safety Code; and Section 42001, Vehicle Code.

Amend Section 80066 to read:
Post-hearing: Amend Sections 80066(a)(12)(A) and (B) and (b)(3)(A) and (B) to read:

80066 PERSONNEL RECORDS 80066

(a) Personnel records shall be maintained on the licensee, administrator and each employee, and shall contain the following information:

(1) through (9) (Continued)

(10) A health screening specified in Section 80065(g).

(11) Tuberculosis test documents as specified in Section 80065(g).

(12) For employees that are required to be fingerprinted pursuant to Section 80019:

(A) A signed statement regarding their criminal record history <u>as required by Section 80019(d)</u>.

(B) Documentation of either a criminal record clearance or exemption <u>as required by Section 80019(e)</u>.

<u>1.</u> <u>For Certified Administrators, a copy of their current and valid Administrator Certification meets this requirement.</u>

(b) Personnel records shall be maintained for all volunteers and shall contain the following:

(1) A health statement as specified in Section 80065(g)(3).

(2) Tuberculosis test documents as specified in Section 80065(g).

(3) For volunteers that are required to be fingerprinted pursuant to Section 80019:

(A) A signed statement regarding their criminal record history <u>as required by Section 80019(d)</u>.

(B) Documentation of either a criminal record clearance or exemption <u>as required by Section 80019(e)</u>.

(c) (Continued)

(d) All personnel records shall be maintained at the facility site and shall be available to the licensing agency for review. (Continued)

Authority Cited: Section 1530, Health and Safety Code.

Reference: Sections 1501 and 1531, Health and Safety Code.

Amend Section 87101 to read:
Post-hearing: Renumber and amend Sections 87101(d)(6) to (c)(1) and amend; renumber Sections 87101(c)(1) through (c)(16) to (c)(2) through (17), respectively; renumber and amend Section 87101(c)(17) to (c)(18) and amend, renumber Sections 87101(d)(7) through (10) to (d)(6) through (9), respectively; and amend Section 87101(r)(1) to read:

87101 DEFINITIONS (Continued) 87101

(c)~~(d)(6)~~(1)~~Department of Justice~~ California Clearance. "~~Department of Justice~~ California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(1) through (14) renumbered to (2) through (15)

(1~~5~~6) Conviction. "Conviction" means:

(A) A criminal conviction in California; or

(B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(1~~6~~7) Course. (Continued)

(1~~7~~8) Criminal Record Clearance. "Criminal Record Clearance" means an individual has a California ~~Department of Justice~~ clearance and an FBI clearance.

(d)(1) through (5) (Continued)

~~(6)~~ [Renumbered to Section 87101(c)(1)]

(~~7~~6) through (~~10~~9) (Continued)

(e) (Continued)

(f) (Continued)

(2) Federal Bureau of Investigation (FBI) Clearance. "Federal Bureau of Investigation Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(g) through (l) (Continued)

(m) (1) Medical Professional. "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

(n) through (q) (Continued)

(r) (1) "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, ~~that period of time, together with any~~ education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service~~, which assist an individual in reestablishing good character~~.

(2) through (7) (Continued)

(s) (1) Serious Deficiency. (Continued)

(2) Shall. (Continued)

(3) Significant Other. "Significant Other" (Continued)

(4) Simplified Exemption. "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1569.17(c)(4), if the individual's criminal history meets specific criteria established by Department regulation.

(5) Singular – Plural. (Continued)

(6) Social Worker. (Continued)

(~~6~~7) SSI/SSP. (Continued)

(8) Standard Precautions. (Continued)

(9) Substantial Compliance. "Substantial Compliance" means the absence of any deficiencies which would threaten the physical health, mental health, safety or welfare of the residents. Such deficiencies include, but are not limited to, those deficiencies referred to in Section 87451 and the presence of any uncorrected serious deficiencies for which civil penalties could be assess~~s~~ed.

(10) Supervision. "Supervision" means to oversee or direct the work of an individual or subordinate but does not necessarily require the immediate presence of the supervisor.

Authority Cited: Sections 1569.23(d), 1569.30, 1569.616(d), and 1569.698(c), Health and Safety Code.

Reference: 42 CFR 418.3; Sections 1569.1, 1569.2, 1569.5, 1569.10, 1569.145, 1569.15, 1569.153, 1569.157, 1569.158, 1569.17, 1569.19, 1569.191(e), 1569.193(a) and (c), 1569.20, 1569.21, 1569.23, 1569.30, 1569.31, 1569.312, 1569.38, 1569.44, 1569.47, 1569.54, 1569.616, 1569.699(a), 1569.73, 1569.74, 1569.82, and 1771(c)(8), 1797.196, 5350, and 7185 et seq., Health and Safety Code; Section 15610.13, Welfare and Institutions Code; and Sections 1800, 4615, 4650, and 4753, Probate Code.

Amend Section 87219 to read:
Post-hearing: Amend Sections 87219(d)(1)(A), (d)(2), and (e) and (e)(1); repeal Section 87219(d)(3)(B)1. and (l) and (l)(1) and renumber (m) and (m)(1) to (l) and (l)(1) and amend to read:

87219 CRIMINAL RECORD CLEARANCE (Continued) 87219

(b) Prior to the Department issuing a license, the applicant, administrator and any adults other than a client, residing in the facility shall have a ~~California~~ criminal record clearance or exemption.

HANDBOOK BEGINS HERE

(1) and (2) (Continued)

(3) The following individuals are exempt from requirements applicable under paragraph (l):

(A) A medical professional, as defined in Section 87101(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:

(i) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

(ii) The individual is providing time-limited specialized clinical care or services.

(iii) The individual is providing care or services within the individual's scope of practice.

(iv) The individual is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person, or similar retained contractor, if all of the following apply:

(i) The individual is hired for a defined, time-limited job.

(ii) The individual is not left alone with clients.

(iii) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) A third-party contractor or other business professional, if all of the following apply:

(i) The individual is retained by a client.

(ii) The individual is at the facility at the request or by permission of that client.

(iii) The individual is not left alone with other clients.

(D) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.

(i) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.

(E) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.

(i) This exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.

(F) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:

(i) Members are not left alone with the clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same group does not conduct such activities more often than once a month.

(G) A volunteer, if all of the following apply:

(i) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

(iv) The volunteer is at the facility during normal waking hours.

(v) The volunteer spends no more than 16 hours per week at the facility.

(H) The following individuals unless contraindicated by the client's needs and service plan:

(i) A spouse, significant other, relative, or close friend of a client.

(ii) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.

(iii) The exemptions in Section 87219(b)(3)(H)(i) or (ii) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

(I) (Continued)

HANDBOOK ENDS HERE

(c) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:

(1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

HANDBOOK BEGINS HERE

(4) Section 1569.17(g) of the Health and Safety Code states: (Continued)

HANDBOOK ENDS HERE

(d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

(1) A person signing the LIC 508 must:

(A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87219(h) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.

(B) If convicted of a crime other than a minor traffic violation as specified in Section 87219(h), provide information regarding the conviction.

(2) If the signed statement indicates a conviction for any crime other than a minor traffic violation for which the fine was $300 or less, the licensee shall immediately notify the Department and the Department will take appropriate action as specified in Section 87219(~~f~~ h). The Department shall take the same actions as would be taken in Health and Safety Code Section 1569.17(c) if a criminal record transcript had been received.

(3) The license shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 87219(c), prior to the individual's employment, residence, or initial presence in the community care facility. (Continued)

~~(B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.~~

~~1. If the Department determines that the licensee or applicant has violated Section 87219(d), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.~~

(e) ~~Prior to employment, residence or initial presence in a licensed facility,~~ ~~a~~All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1569.17(b) shall prior to working, residing or volunteering in a licensed facility:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by the Department or

(2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

(f) Violation of Section 87219(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.

(1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.49.

(g) Violation of Section 87219(e) may result in a denial of the license application or suspension and/or revocation of the license.

(h) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1569.17(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than $300 and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the actions specified in Health and Safety Code Section 1569.17(c). (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58 and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility. (Continued)

(i) through (k) (Continued)

~~(l) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.~~

~~(1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:~~

~~(A) The law enforcement agency and court involved;~~

~~(B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;~~

~~(C) The individual's current and pending legal involvement; and~~

~~(D) The individual's current address and phone number.~~

(~~m~~l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

Amend Section 87219.1 to read:
Post-hearing: Amend Sections 87219.1(b)(1); (d); (e)(6)(A); (q)(3); (r)(1), (w)(2); and (x) to read:

87219.1 CRIMINAL RECORD EXEMPTION 87219.1

(a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87219.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1569.17(c)(3);

(4) Any person who has been convicted of any crime specified below:

(A) Battery

(B) Shooting at Inhabited Dwelling

(C) Corporal Injury on Spouse/Cohabitant

(D) Discharging Firearm with Gross Negligence

(E) Exhibiting Weapon/Firearm

(F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G) Criminal Threat to Harm or Injure Another Person

(H) Cruelty to Animals

(I) Willful Harm or Injury to Child; or

(5) Any other person ordered to be removed by the Department.

(b) In addition to the requirements of Section 87219.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.

(1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. ~~12/02~~ 9/03), Removal Confirmation - Denial, LIC 300B (Rev. ~~12/02~~ 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. ~~12/02~~ 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. ~~12/02~~ 9/03).

(c) After a review of the criminal record transcript, the Department may grant an exemption if: (Continued)

(d) To request a criminal record exemption, ~~individuals~~ a licensee or license applicant must submit information that indicates that ~~he/she~~ the individual meets the requirements of Section 87219.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within ~~thirty (30)~~ forty-five (45) days of the date of the Department's notice.

(1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87219.1(e).

(2) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

(3) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may deny the exemption request.

(4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:

(A) Chooses not to request the exemption and

(B) Terminates the individual's employment because of the individual's criminal history, or

(C) Removes the individual who resides in the facility because of the individual's criminal history.

(e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

(1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others. (Continued)

(6) Character references.

(A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. ~~9/02~~ 7/03]). (Continued)

(8) Evidence of honesty and truthfulness as revealed in exemption application documents.

(A) Documents include, but are not limited to:

1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and (Continued)

(9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

(f) The Department shall also consider the following factors in evaluating a request for an exemption:

(1) Facility and type of association.

(2) The individual's age at the time the crime was committed.

(g) through (i) (Continued)

(j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:

(1) Makes a knowingly false or misleading statement regarding:

(A) Material relevant to their application for a criminal record clearance or exemption,

(B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

(C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(2) Is on probation or parole.

(A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87219.1(j)(2).

(k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 87219.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87219.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6) The individual has not been convicted of a violent felony.

(7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87219.1(k)(1) through (5) above shall begin from the last date of conviction(s).

(l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87219.1(k)(1) through (6).

(m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1569.17(f)(1) of the Health and Safety Code.

HANDBOOK BEGINS HERE

Health and Safety Code Section 1569.17(f)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

(1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.

(2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.

(3) Penal Code Section 203 – Any mayhem.

(4) Penal Code Section 206 - Felony torture.

(5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.

(6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.

(7) Penal Code Section 215 – Carjacking.

(8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.

(9) Penal Code Section 243.4 – Sexual battery.

(10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

(11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.

(12) Penal Code Section 264.1 – Rape in concert.

(13) Penal Code Section 266 – Enticing a minor into prostitution.

(14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.

(15) Penal Code Section 266h(b) – Pimping a minor.

(16) Penal Code Section 266i(b) – Pandering a minor.

(17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.

(18) Penal Code Section 267 – Abduction for prostitution.

(19) Penal Code Section 269 – Aggravated assault of a child.

(20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).

(21) Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.

(22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.

(23) Penal Code Section 285 – Incest.

(24) Penal Code Section 286 – Sodomy.

(25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

(26) Penal Code Section 288a – Oral copulation.

(27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.

(28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

(29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.

(30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.

(31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.

(32) Penal Code Section 311.3 – Sexual exploitation of a child.

(33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.

(34) Penal Code Section 311.10 – Advertising or distributing child pornography.

(35) Penal Code Section 311.11 – Possessing child pornography.

(36) Penal Code Section 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.

(37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

(38) Penal Code Section 368– Elder or dependent adult abuse.

(39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.

(40) Penal Code Section 451(a) or (b) – Arson.

(41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.

(42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.

(43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

(44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.

(45) Penal Code Sections 664/187 – Any attempted murder.

(46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

(47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.

(48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.

(49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

(50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.

(51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.

(52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

(n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 87219.1(n)(1) through (4) below:

(1) The individual does not have a demonstrated pattern of criminal activity;

(2) The individual has no more than one conviction;

(3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

(o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.

(p) If the Department denies or cannot grant a criminal record exemption the Department shall:

(1) For initial applicants, deny the application.

(2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.

(4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87219.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.

(1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

(2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

(3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87219.1(q)(1) above, the Department may, in ~~its discretion~~ accordance with the provisions in Section 87219.1 et seq., grant or deny the subsequent request for an exemption.

(4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information

required of an individual requesting a criminal record exemption as provided in Section 87219.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. ~~3/02~~ 9/03).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state of the United States Government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:

(1) The basis on which the Department granted the exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients in the facility where the individual wishes to transfer;

(5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or

(6) Whether the exemption meets current exemption laws or regulations.

(t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(u) At the Department's discretion, an exemption may be rescinded if it is determined that:

(1) The exemption was granted in error, or

(2) The exemption does not meet current exemption laws or regulations, or

(3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(w) If the Department rescinds an exemption the Department shall:

(1) Notify the licensee and the affected individual in writing; and

(2) Initiate ~~the appropriate~~ an administrative action.

(x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate ~~the appropriate~~ an administrative action to protect the health and safety of clients.

Authority Cited: Section 1569.30, Health and Safety Code.

Reference: Section 1569.17, Health and Safety Code; and Section 42001, Vehicle Code.

Amend Section 87454 to read:
Post-hearing: Amend Section 87454(b), repeal Section 87454(b)(1) and renumber (b)(1)(A) to (b)(1) to read:

87454 PENALTIES (Continued) 87454

(b) Notwithstanding Section 87454(a) above, an immediate penalty of $100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1569.17(b) has not obtained a ~~Department of Justice~~ California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87219(e) prior to the individual's employment, residence or initial presence in the facility.

(1) ~~Violation of Section 87219(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.~~

~~(A)~~ The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.17.

(2) (Continued)

Authority Cited: Sections 1569.30 and 1569.49, Health and Safety Code.

Reference: Sections 1569.17, 1569.33, 1569.335, 1569.35, 1569.485, and 1569.49, Health and Safety Code.

Amend Section 87565 to read:
Post-hearing: Amend Section 87565(g)(1) to read:

87565 PERSONNEL REQUIREMENTS – GENERAL (Continued) 87565

(g) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by law or Department regulations or

(2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility. (Continued)

Authority Cited: Sections 1569.30 and 1569.625, Health and Safety Code.

Reference: Sections 1569.17, 1569.30, 1569.31, 1569.312, and 1569.625, Health and Safety Code; and Section 42001, Vehicle Code.

Amend Section 87566 to read:
Post-hearing: Amend Sections 87566(a)(13)(A) and (B) and (b)(3)(A) to read:

87566 PERSONNEL RECORDS 87566

(a) Personnel records shall be maintained on the licensee, administrator and each employee and shall contain the following information: (Continued)

(11) A health screening as specified in Section 87565.

(12) Hazardous health conditions documents as specified in Section 87565.

(13) For employees that are required to be fingerprinted pursuant to Section 80019:

(A) A signed statement regarding their criminal record history <u>as required by Section 87219(d)</u>.

(B) Documentation of either a criminal record clearance or a criminal record exemption <u>as required by Section 87219(e)</u>.

1. <u>For Certified Administrators, a copy their current and valid Administrative Certification meets this requirement.</u>

(b) Personnel records shall be maintained for all volunteers and shall contain the following:

(1) A health statement as specified in Section 87565(e).

(2) Health screening documents as specified in Section 87565(e).

(3) For volunteers that are required to be fingerprinted pursuant to Section 87219:

(A) A signed statement regarding their criminal record history <u>as required by Section 87219(d)</u>.

(B) Documentation of either a criminal record clearance or a criminal record exemption <u>as required by Section 87219(e)</u>.

(c) through (e) (Continued)

(f) All personnel records shall be maintained at the facility and shall be available to the licensing agency for review.

(1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility upon request.

(g) (Continued)

Authority Cited: Sections 1569.30 and 1569.616(j), Health and Safety Code.

Reference: Sections 1569.30, 1569.31, 1569.312, 1569.613, 1569.616, and 1569.625, Health and Safety Code.

Amend Section 87801 to read:
Post-hearing: Renumber Section 87801(d)(4) to (c)(1) and amend, renumber (c)(10) to (c)(11), renumber (c)(11) to (c)(12) and amend, and renumber (c)(12) to (c)(13); renumber Sections 87801(d)(5) through (13) to (d)(4) through (d)(12); and amend Section 87801(r)(2) to read:

87801 DEFINITIONS (Continued) 87801

(c) (Continued)

~~(d)(4)~~(1) "~~Department of Justice~~ California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(1~~0~~1) "Conviction" means:

(A) A criminal conviction in California; or

(B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(1~~1~~2) "Criminal Record Clearance" means an individual has a California ~~Department of Justice~~ clearance and an FBI clearance.

(1~~2~~3) (Continued)

(d) (Continued)

~~(4)~~ [Renumbered to Section 87801(c)(1).]

(~~5~~4) through (1~~3~~2) (Continued)

(f) (Continued)

(2) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile. (Continued)

(m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

(2) "Mental Disorder" (Continued)

(r) (Continued)

(2) "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, ~~that period of time, together with any~~ education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service~~, which assist an individual in reestablishing good character~~.

(3) through (5) (Continued)

(s) (Continued)

(4) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1568.09(c)(5), if the individual's criminal history meets specific criteria established by Department regulation.

(5) through (10) (Continued)

(t) through (z) (Continued)

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Sections 1568.01, 1568.02, 1568.03, 1568.061, 1568.064, 1568.072, and 1797.196, Health and Safety Code.

Amend Section 87819 to read:
Post-hearing: Amend Sections 87819(a)(3)(A)1. and (g), repeal Sections 87819(a)(4)(B) and (B)1.; amend Sections 87819(d) and (d)(1); repeal Sections 87819(k) and (k)(1) and renumber (l) and (l)(1) to (k) and (k)(1) and amend to read:

87819 CRIMINAL RECORD CLEARANCE 87819

(a) The Department shall conduct a criminal record review of all the persons listed in Subsection (b) below and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility based upon the results of such review. (Continued)

(2) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:

(A) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).

(B) A copy of the individual's:

1. Driver's license, or

2. Valid identification card issued by the Department of Motor Vehicles, or

3. Valid photo identification issued by another state or the United States government if the individual is not a California resident.

(C) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

HANDBOOK BEGINS HERE

(D) Section 1568.09(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

HANDBOOK ENDS HERE

(3) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

(A) A person signing the LIC 508 must:

1. Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87819(g) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.

2. If convicted of a crime other than a minor traffic violation, as specified in Section 87819(g), provide information regarding the conviction.

(4) The licensee shall submit the fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or complying with Section 87819(a)(2) prior to the individual's employment, residence, or initial presence in the facility. (Continued)

~~(B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.~~

~~1. If the Department determines that the licensee or applicant has violated Section 87819(a)(4)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.~~

(c) The following individual's are exempt from the requirements applicable under Section 87819(b).

(1) A medical professional, as defined in Section 87801(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's governing California medical care regulatory entity.

(B) The individual is providing time-limited specialized clinical care or services.

(C) The individual is providing care or services within the individual's scope of practice.

(D) The individual is not a community care facility licensee or an employee of the facility.

(2) A third-party repair person or similar retained contractor, if all of the following apply:

(A) The individual is hired for a defined, time-limited job.

(B) The individual is not left alone with clients.

(C) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.

(A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.

(4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with permission of, the client.

(A) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.

(5) Members of fraternal, service and similar organizations who conduct group activities for clients if all of the following apply:

(A) Members are not left alone with the clients.

(B) Members do not transport clients off the facility premises.

(C) The same group does not conduct such activities more often than once a month.

(6) A volunteer if all of the following apply:

(A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(B) The volunteer is never left alone with clients.

(C) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.

(7) The following individuals unless contraindicated by the client's needs and service plan:

(A) A spouse, relative, significant other, or close friend of a client.

(B) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.

(C) The exemptions in Sections 87819(d)(7)(A) or (B) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

(8) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(d) ~~Prior to employment, residence or initial presence in a licensed facility,~~ ~~a~~All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1568.09 shall prior to working, residing or volunteering in a licensed facility:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by the Department or

(2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

(e) Violation of Section 87819(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.

(1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.0822.

(f) Violation of Section 87819(d) may result in a denial of the license application or suspension and/or revocation of the license.

(g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section ~~1522(b)~~ 1568.09 discloses a plea or verdict of guilty or a conviction following a plea of nolo conterdere for a crime other than a minor traffic violation, for which the fine was less than $300, and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the following actions: (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1568.092 and deny the application or revoke the license if the individual continues to provide services and/or reside at the facility. (Continued)

(h) through (j) (Continued)

~~(k) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.~~

~~(1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:~~

~~(A) The law enforcement agency and court involved;~~

~~(B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;~~

~~(C) The individual's current and pending legal involvement; and~~

~~(D) The individual's current address and phone number.~~

(~~l~~k) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Sections 1568.072 and 1568.09, Health and Safety Code.

Amend Section 87819.1 to read:
Post-hearing: Amend Sections 87819.1(b)(1); (d), (d)(2), and (d)(3); (e)(6)(A) and (8)(A)1.; (q)(3); (r)(1), (w)(2); and (x); and adopt Section 87819.1(d)(4) et seq. to read:

87819.1 CRIMINAL RECORD EXEMPTION 87819.1

(a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87819.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1568.09(c)(4);

(4) Any person who has been convicted of any crime specified below:

(A) Battery

(B) Shooting at Inhabited Dwelling

(C) Corporal Injury on Spouse/Cohabitant

(D) Discharging Firearm with Gross Negligence

(E) Exhibiting Weapon/Firearm

(F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G) Criminal Threat to Harm or Injure Another Person

(H) Cruelty to Animals

(I) Willful Harm or Injury to Child; or

(5) Any other person ordered to be removed by the Department.

(b) In addition to the requirements of Section 87819.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.

(1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. ~~12/02~~ 9/03), Removal Confirmation - Denial, LIC 300B (Rev. ~~12/02~~ 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. ~~12/02~~ 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. ~~12/02~~ 9/03).

(c) After a review of the criminal record transcript, the Department may grant an exemption if: (Continued)

(d) To request a criminal record exemption, ~~individuals~~ a licensee or license applicant must submit information that indicates that ~~he/she~~ the individual meets the requirements of Section 87819.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within ~~thirty (30~~) forty-five (45) days of the date of the Department's notice.

(1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87819.1(e).

(2) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

(3) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may deny the exemption request.

(4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:

(A) Chooses not to request the exemption and

(B) Terminates the individual's employment because of the individual's criminal history, or

(C) Removes the individual who resides in the facility because of the individual's criminal history.

(e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

(1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others. (Continued)

(6) Character references.

(A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. ~~9/02~~ 7/03]). (Continued)

(8) Evidence of honesty and truthfulness as revealed in exemption application documents.

(A) Documents include, but are not limited to:

1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. ~~3/99~~ 1/03]) and (Continued)

(f) The Department shall also consider the following factors in evaluating a request for an exemption:

(1) Facility and type of association.

(2) The individual's age at the time the crime was committed.

(g) through (i) (Continued)

(j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:

(1) Makes a knowingly false or misleading statement regarding:

(A) Material relevant to their application for a criminal record clearance or exemption,

(B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

(C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(2) Is on probation or parole.

(A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87819.1(j)(2).

(k) The Department shall consider granting a criminal record exemption if the individual's criminal record history meets all of the applicable criteria specified in Sections 87819.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87819.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6) The individual has not been convicted of a violent felony.

(7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87819.1(k)(1) through (5) above shall begin from the last date of conviction(s).

(l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87819.1(k)(1) through (6).

(m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1568.09(f)(1) of the Health and Safety Code.

HANDBOOK BEGINS HERE

Health and Safety Code Section 1568.09(f)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

(1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.

(2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.

(3) Penal Code Section 203 – Any mayhem.

(4) Penal Code Section 206 - Felony torture.

(5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.

(6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.

(7) Penal Code Section 215 – Carjacking.

(8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.

(9) Penal Code Section 243.4 – Sexual battery.

(10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

(11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.

(12) Penal Code Section 264.1 – Rape in concert.

(13) Penal Code Section 266 – Enticing a minor into prostitution.

(14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.

(15) Penal Code Section 266h(b) – Pimping a minor.

(16) Penal Code Section 266i(b) – Pandering a minor.

(17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.

(18) Penal Code Section 267 – Abduction for prostitution.

(19) Penal Code Section 269 – Aggravated assault of a child.

(20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).

(21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.

(22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.

(23) Penal Code Section 285 – Incest.

(24) Penal Code Section 286 – Sodomy.

(25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

(26) Penal Code Section 288a – Oral copulation.

(27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.

(28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

(29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.

(30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.

(31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.

(32) Penal Code Section 311.3 – Sexual exploitation of a child.

(33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.

(34) Penal Code Section 311.10 – Advertising or distributing child pornography.

(35) Penal Code Section 311.11 – Possessing child pornography.

(36) Penal Code Section 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.

(37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

(38) Penal Code Section 368 – Elder or dependent adult abuse.

(39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.

(40) Penal Code Section 451(a) or (b) – Arson.

(41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.

(42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.

(43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

(44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.

(45) Penal Code Sections 664/187 – Any attempted murder.

(46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

(47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.

(48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.

(49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

(50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.

(51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction

(52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

(n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 87819.1(n)(1) through (4) below:

(1) The individual does not have a demonstrated pattern of criminal activity;

(2) The individual has no more than one conviction;

(3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

(o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.

(p) If the Department denies or cannot grant a criminal record exemption the Department shall:

(1) For initial applicants, deny the application.

(2) For current licensees, the Department may institute an administrative action including, but not limited to, revocation of the license.

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1568.092, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1568.092, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87819.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.

(1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

(2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

(3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87819.1(q)(1) above, the Department may, in ~~its discretion~~ accordance with the provisions in Section 87819.1 et seq., grant or deny the subsequent request for an exemption.

(4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in this section. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. ~~3/02~~ 9/03).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:

(1) The basis on which the Department granted the exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients in the facility where the individual wishes to transfer;

(5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations.

(6) Whether the exemption meets current exemption laws or regulations.

(t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(u) At the Department's discretion, an exemption may be rescinded if it is determined that:

(1) The exemption was granted in error or

(2) The exemption does not meet current exemption laws or regulations or

(3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(w) If the Department rescinds an exemption the Department shall:

(1) Notify the licensee and the affected individual in writing; and

(2) Initiate ~~the appropriate~~ an administrative action.

(x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may immediately initiate ~~the appropriate~~ an administrative action to protect the health and safety of clients.

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Sections 1568.072, 1568.082, 1568.09, 1568.092, and 1~~1~~3143, Health and Safety Code.

Amend 87854 to read:
Post-hearing: Amend Section 87854(b), repeal Section 87854(b)(1) and renumber (b)(1)(A) to (b)(1) to read:

87854 PENALTIES (Continued) 87854

(b) An immediate penalty of $100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1568.09(b) has not obtained a ~~Department of Justice~~ California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87819(d) prior to the individual's employment, residence or initial presence in the facility.

(1) ~~Violation of Section 87819(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.~~

~~(A)~~ The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1568.09.

(2) (Continued)

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Sections 1568.072, 1568.0822, and 1568.09, Health and Safety Code.

Amend Section 87861 to read:

87861 REPORTING REQUIREMENTS (Continued) 87861

(c) The items below shall be reported to the Department within 10 working days following the occurrence. (Continued)

(3) Any change of the chief executive officer of a corporation or association. (Continued)

(B) Fingerprints shall be submitted as specified in Section 87819. (Continued)

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Sections 1568.072 and 1797.196, Health and Safety Code.

Amend Section 87865 to read:
Post-hearing: Amend Section 87865(j)(1) to read:

87865 PERSONNEL REQUIREMENTS (Continued) 87865

(j) Prior to employment or initial presence in the facility, all employees and volunteers subject to a criminal record review shall:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by law or Department regulations or

(2) Request a transfer of a criminal record clearance as specified in Section 87819(a)(2) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87819.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility. (Continued)

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Section 1568.072, Health and Safety Code.

Amend Section 87866 to read:
Post-hearing: Amend Sections 87866(a)(12) and (b)(3)(A) and (B) to read:

87866 PERSONNEL RECORDS 87866

(a) Personnel records shall be maintained on the licensee, administrator and each employee, and shall contain the following information: (Continued)

(12) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87819(d).

(13) A health screening as specified in Section 87865(h).

(14) Tuberculosis test documents as specified in Section 87865(h).

(b) Personnel records shall be maintained for all volunteers and shall contain the following:

(1) A health statement as specified in Section 87865(h)(2)(C).

(2) Tuberculosis test documents as specified in Section 87865(h).

(3) For volunteers that are required to be fingerprinted pursuant to Section 87819:

(A) A signed statement regarding their criminal record history as required by Section 87819(a)(3).

(B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 87819(d).

(c) (Continued)

(d) All personnel records shall be maintained at the facility site and be available to the licensing agency for review. (Continued)

(e) (Continued)

Authority Cited: Section 1568.072, Health and Safety Code.

Reference: Section 1568.072, Health and Safety Code.

Amend Section 101152 to read:
Post-hearing: Renumber Section 101152(d)(3) to(c)(1)and amend renumber Sections 101152(c)(1) through (c)(12) to (c)(2) through (c)(13), respectively; renumber Section 101152(c)(13) to (c)(14) and reumber Sections 101152(d)(4) and (5) to (3) and (4); and amend Section 101152(r)(1) to read:

101152 DEFINITIONS (Continued) 101152

(a) and (b) (Continued)

(c)~~(d)(3)~~(1) "~~Department of Justice~~ California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(1) through (3) renumbered to (2) through (4)

(~~4~~5) "Child Abuse Central Index" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.

(~~5~~6) "Child Abuse Central Index Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match or the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.

(~~6~~7) through (1~~1~~2) (Continued)

(1~~2~~3) "Conviction" means:

(A) A criminal conviction in California; or

(B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(1~~3~~4) "Criminal Record Clearance" means an individual has a California Department of Justice clearance and an FBI clearance.

(d) (Continued)

~~(3)~~ [Renumbered to Section 101152(c)(1).]

(4~~3~~) (Continued)

(~~5~~4) (Continued)

(e) (Continued)

(f) (1) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(g) through (l) (Continued)

(m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

(2) (Continued)

(n) through (q)(Continued)

(r) (1) "Rehabilitation" means the effort to reestablish good character since the date of the last conviction, including, but not limited to, ~~that period of time, together with any~~ education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service~~, which assist an individual in reestablishing good character~~.

(2) (Continued)

(s) (Continued)

(4) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1596.871(c)(3), if the individual's criminal history meets specific criteria established by Department regulation.

(5) (Continued)

(t) through (z) (Continued)

Authority Cited: Sections 1596.81 and 1596.858(e), Health and Safety Code.

Reference: Sections 1502, 1596.72, 1596.73, 1596.74, 1596.75, 1596.750, 1596.76, 1596.77, 1596.770, 1596.78, 1596.79, 1596.790, 1596.791, 1596.81, 1596.858(e), 1596.955 and 1596.956, Health and Safety Code.

Amend Section 101170 to read:
Post-hearing: Amend Section 101170(d)(1)(A)and (e) and (e)(1); repeal Sections 101170(d)(2)(B) and (B)1. and (m) and (m)(1); and reletter Sections 101170(n) and (n)(1) to (m) and (m)(1) and amend to read:

101170 CRIMINAL RECORD CLEARANCE 101170

(a) The Department shall conduct a criminal record review of all persons specified in Health and Safety Code Section 1596.871(b). The Department has the authority to approve or deny a facility license, or employment, residence or presence in the facility, based on the results of this review.

HANDBOOK BEGINS HERE

(1) (Continued)

(2) Section 1596.871(b) of the Health and Safety Code provides in part: (Continued)

(D) Any staff person, volunteer or employee who has contact with the children. (Continued)

HANDBOOK ENDS HERE

(b) The following individuals are exempt from the requirement to submit fingerprints:

(1) A volunteer who is a relative, legal guardian, or foster parent of a child in the facility.

(2) A volunteer that provides time-limited specialized services if all of the following apply:

(A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(B) The volunteer spends no more than 16 hours per week at the facility.

(C) The volunteer is not left alone with children in care.

(3) A volunteer who is a senior citizen if all of the following apply:

(A) The senior citizen participates in a Foster Grandparent Program under the authority of the National Senior Service Corps and administered by the Corporation for National Service.

(B) The facility has an agreement with the foster grandparent program concerning the placement of the foster grandparent.

(C) The foster grandparent is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(D) The foster grandparent is not left alone with children in care.

(4) A student who is enrolled or participating at an accredited educational institution if all of the following apply:

(A) The student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(B) The facility has an agreement with the educational institution concerning the placement of the student.

(C) The student spends no more than 16 hours per week at the facility.

(D) The student is not left alone with the children in care.

(5) A third-party repair person, or similar retained contractor, if all of the following apply:

(A) The individual is hired for a defined, time-limited job.

(B) The individual is not left alone with children.

(C) When children are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(6) A medical professional, as defined in Section 101152(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity if all of the following apply:

(A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

(B) The individual is providing time-limited specialized clinical care or services.

(C) The individual is providing care or services within the individual's scope of practice.

(D) The individual is not a community care facility licensee and is not employed, retained, or contracted by the licensee.

(7) Employees of a licensed home health agency who have a contract with a child's parent or guardian and are in the facility at the request of that parent or guardian.

(A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.

(8) An attendant or facilitator for a child with a developmental disability who is visiting the child or providing direct care and supervision to the child.

(A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.

(c) (Continued)

(d) All individuals subject to criminal record review shall, be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

(1) A person signing the LIC 508 must:

(A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 101170(k) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.

(B) If convicted of a crime other than a minor traffic violation as specified in Section 101170(k), provide information regarding the conviction.

(2) The licensee shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 101170(e)(1), prior to the individual's employment or initial presence in the child care facility. (Continued)

~~(B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.~~

~~1. If the Department determines that the licensee or applicant has violated Section 101170(d)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed.~~

(e) ~~Prior to employment, residence or initial presence in a licensed facility,~~ ~~a~~All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing or volunteering in a licensed facility:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by the Department or

(2) Request a transfer of a criminal record clearance as specified in Section 101170(f) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 101170.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

(f) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:

(1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02). (Continued)

(2) through (4)(Continued)

(5) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(g) (Continued)

(h) Violation of Section 101170(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.

(1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.

(i) Violation of Section 101170(e) may result in a denial of the license application or suspension and/or revocation of the license.

(j) (Continued)

(k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 101217. (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility. (Continued)

(l) (Continued)

~~(m) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.~~

~~(1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:~~

~~(A) The law enforcement agency and court involved;~~

~~(B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;~~

~~(C) The individual's current and pending legal involvement; and~~

~~(D) The individual's current address and phone number.~~

(~~n~~m) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code.

Amend Section 101170.1 to read:
Post-hearing: Amend Sections 101170.1(b)(1); (d) and (d)(1), (2), and (3); (e)(6)(A); (q)(3); (r)(1), (w)(2) and (x); and adopt new Sections 101170.1(d)(4) and (d)(4)(A) through (C) to read:

101170.1 CRIMINAL RECORD EXEMPTION 101170.1

(a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 101170.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);

(4) Any person who has been convicted of any crime specified below:

(A) Battery

(B) Shooting at Inhabited Dwelling

(C) Corporal Injury on Spouse/Cohabitant

(D) Discharging Firearm with Gross Negligence

(E) Exhibiting Weapon/Firearm

(F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G) Criminal Threat to Harm or Injure Another Person

(H) Cruelty to Animals

(I) Willful Harm or Injury to Child; or

(5) Any other person ordered to be removed by the Department.

(b) In addition to the requirements of Section 101170.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.

(1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. ~~12/02~~ 9/03), Removal Confirmation - Denial, LIC 300B (Rev. ~~12/02~~ 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. ~~12/02~~ 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. ~~12/02~~ 9/03).

(c) After a review of the criminal record transcript, the Department may grant an exemption if: (Continued)

(d) To request a criminal record exemption, ~~individuals~~ a licensee or license applicant must submit information that indicates that ~~he/she~~ the individual meets the requirements of Section 101170.1(c)(4). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within ~~thirty (30)~~ forty-five (45) days of the date of the Department's notice.

(1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to ~~evaluate~~ process the exemption request, pursuant to Section 101170.1(e).

(2) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

(3) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may deny the exemption request.

(4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:

(A) Chooses not to request the exemption and

(B) Terminates the individual's employment because of the individual's criminal history, or

(C) Removes the individual who resides in the facility because of the individual's criminal history.

(e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

(1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others. (Continued)

(6) Character references.

(A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. ~~9/02~~ 7/03]). (Continued)

(8) Evidence of honesty and truthfulness as revealed in exemption application documents.

(A) Documents include, but are not limited to:

1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev 1/03]) and (Continued)

(9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.

(f) The Department shall also consider the following factors in evaluating a request for an exemption:

(1) Facility and type of association.

(2) The individual's age at the time the crime was committed.

(g) through (i) (Continued)

(j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:

(1) Makes a knowingly false or misleading statement regarding:

(A) Material relevant to their application for a criminal record clearance or exemption,

(B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

(C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(2) Is on probation or parole.

(A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 101170.1(j)(2).

(k) The Department shall consider granting a criminal record exemption for an individual when the individual's criminal record history meets all of the applicable criteria specified in Sections 101170.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 101170.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6) The individual has not been convicted of a violent felony.

(7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Section 101170.1(k)(1) through (5) above shall begin from the last date of conviction(s).

(l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 101170.1(k)(1) through (6).

(m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1596.871(f) of the Health and Safety Code.

HANDBOOK BEGINS HERE

Health and Safety Code Section 1596.871(f) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

(1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.

(2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.

(3) Penal Code Section 203 – Any mayhem.

(4) Penal Code Section 206 - Felony torture.

(5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.

(6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.

(7) Penal Code Section 215 – Carjacking.

(8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.

(9) Penal Code Section 243.4 – Sexual battery.

(10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

(11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.

(12) Penal Code Section 264.1 – Rape in concert.

(13) Penal Code Section 266 – Enticing a minor into prostitution.

(14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.

(15) Penal Code Section 266h(b) – Pimping a minor.

(16) Penal Code Section 266i(b) – Pandering a minor.

(17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.

(18) Penal Code Section 267 – Abduction for prostitution.

(19) Penal Code Section 269 – Aggravated assault of a child.

(20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).

(21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.

(22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.

(23) Penal Code Section 285 – Incest.

(24) Penal Code Section 286 – Sodomy.

(25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

(26) Penal Code Section 288a – Oral copulation.

(27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.

(28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

(29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.

(30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.

(31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.

(32) Penal Code Section 311.3 – Sexual exploitation of a child.

(33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.

(34) Penal Code Section 311.10 – Advertising or distributing child pornography.

(35) Penal Code Section 311.11 – Possessing child pornography.

(36) Penal Code Section 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.

(37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

(38) Penal Code Section 368 – Elder or dependent adult abuse.

(39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.

(40) Penal Code Section 451(a) or (b) – Arson.

(41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.

(42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.

(43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

(44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.

(45) Penal Code Sections 664/187 – Any attempted murder.

(46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

(47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.

(48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.

(49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

(50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.

(51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.

(52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

(n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 101170.1(n)(1) through (4) below:

(1) The individual does not have a demonstrated pattern of criminal activity;

(2) The individual has no more than one conviction;

(3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

(o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.

(p) If the Department denies or cannot grant a criminal record exemption the Department shall:

(1) For initial applicants, deny the application. (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(4) For individuals residing in the facility, including spouses of the applicant or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 101170.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.

(1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

(2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

(3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 101170.1(q)(1) above, the Department may, ~~in its discretion~~ <u>according to the provisions in Section 101170.1 et seq.</u>, grant or deny the subsequent request for an exemption.

(4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 101170.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. ~~3/02~~ 9/03).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:

(1) The basis on which the Department granted the exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients in the facility where the individual wishes to transfer;

(5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or

(6) Whether the exemption meets current exemption laws or regulations.

(t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(u) At the Department's discretion, an exemption may be rescinded if it is determined that:

(1) The exemption was granted in error or

(2) The exemption does not meet current exemption laws or regulations or

(3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(w) If the Department rescinds an exemption the Department shall:

(1) Notify the licensee and the affected individual in writing; and

(2) Initiate ~~the appropriate~~ an administrative action.

(x) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate ~~the appropriate~~ an administrative action to protect the health and safety of clients.

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.81(b), 1596.871, 1596.885, and 1596.8897, Health and Safety Code.

Amend Section 101170.2 to read:

101170.2 CHILD ABUSE CENTRAL INDEX 101170.2

(b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1596.871, shall complete a Child Abuse Central Index check (LIC 198A [3/99]) prior to employment or initial presence in the child care facility.

(1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [Rev. 3/99]) directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 101170(d). (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: 1596.81(b) and 1596.871, Health and Safety Code.

Amend Section 101195 to read:
Post-hearing: Amend Section 101195(b), repeal Section 101195(b)(1), and renumber Section 101195(b)(1)(A) to (b)(1) to read:

101195 PENALTIES (Continued) 101195

(b) Notwithstanding Section 101195(a) above, an immediate penalty of $100 per cited violation shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1596.871(b) has not obtained a ~~Department of Justice~~ California clearance or criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 101170(e) prior to the ~~person's~~ individual's employment, residence or initial presence in the facility.

(1) ~~Violation of Section 101170(e) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.~~

~~(A)~~ The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.

(2) (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Section 1596.81(b), 1596.871, 1596.98 and 1596.99, Health and Safety Code.

Amend Section 101212 to read:

101212 REPORTING REQUIREMENTS (Continued) 101212

(e) The items below shall be reported to the Department within 10 working days following their occurrence: (Continued)

(3) Any change of the chief executive officer of a corporation, of the general partner(s) of a partnership, or of the controlling partners in a limited liability corporation. (Continued)

(B) Fingerprints shall be submitted as specified in Section 101170(d). (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Section 1596.72, 1596.73, 1596.81 and 1597.05, Health and Safety Code.

Amend Section 101216 to read:
Post-hearing: Amend Section 101216(i)(1) to read:

101216 PERSONNEL REQUIREMENTS (Continued) 101216

(i) Prior to employment or ~~at~~ initial presence in the child care center, all employees and volunteers subject to a criminal record review shall:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by law or Department regulations or

(2) Request a transfer of a criminal record clearance as specified in Section 101170(f) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 101170.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility. (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.72, 1596.73, 1596.81, 1596.871, 1596.880, 1596.881, and 1596.882, Health and Safety Code.

Amend Section 101217 to read:
Post-hearing: Amend Sections 101217(a)(13 and (14) and (b)(3)(A) and (B) to read:

101217 PERSONNEL RECORDS 101217

(a) Personnel records shall be maintained on the licensee, administrator and each employee and shall contain the following information:

(1) through (10) (Continued)

(11) A health screening as specified in Section 101216(g).

(12) Tuberculosis test documents as specified in Section 101216(g).

(13) A signed statement regarding their criminal record history as required by Section 101170(d).

(14) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 101170(e).

(b) Personnel records shall be maintained for all volunteers and shall contain the following:

(1) A health statement as specified in Section 101216(g).

(2) Tuberculosis test documents as specified in Section 101216(g)(3).

(3) For volunteers that are required to be fingerprinted pursuant to Section 101170:

(A) A signed statement regarding their criminal record history as required by Section 101170(d).

(B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 101170(e). (Continued)

(d) All personnel records shall be maintained at the child care center and shall be available to the licensing agency for review. (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.72, 1596.73, 1596.81, 1596.880, 1596.881 and 1596.882, Health and Safety Code.

Amend Section 102352 to read:
Post-hearing: Renumber Section 102352(d)(3) to (c)(1) and amend; renumber Sections 102352(c)(1) through (c)(6) to (c)(2) to (c)(7); renumber Section 102352(c)(7) to (c)(8) and amend; renumber Section 102352(d)(4) to (d)(3); and amend Section 102352(r) to read:

102352 DEFINITIONS 102352

(a) and (b) (Continued)

(c)~~(d)(3)~~(1) "~~Department of Justice~~ California Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(1) and (2) renumbered to (2) and (3)

(~~3~~4) "Child Abuse Central Index" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse and/or severe neglect. Each child protection agency (police, sheriff, county welfare and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.

(~~4~~5) "Child Abuse Central Index Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match or the search resulted in a match but the California Department of Social Services determined after an investigation that the allegation of child abuse or neglect was not substantiated.

(~~5~~6) (Continued)

(~~6~~7) "Conviction" means:

(A) A criminal conviction in California, or

(B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.

(~~7~~8) "Criminal Record Clearance" means an individual has a California ~~Department of Justice~~ clearance and an FBI clearance.

(d) (Continued)

(3) "Department of Justice Clearance" means an individual has no felony or misdemeanor convictions reported by the California Department of Justice. However, the individual may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(~~3~~) [Renumbered to Section 102352(c)(1).]

(4<u>3</u>) (Continued)

(e) (Continued)

(f) (Continued)

(2) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions reported by the FBI. The individual may also have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

(g) through (l) (Continued)

(m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his/her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).

(n) through (q)(Continued)

(r) (1) "Rehabilitation" means <u>the effort to reestablish good character since the date of the last conviction, including, but not limited to,</u> ~~that period of time, together with any~~ education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service~~, which assist an individual in reestablishing good character~~.

(2) (Continued)

(s) (1) "Simplified Exemption" means an exemption granted on the Department's own motion, as authorized in Health and Safety Code Section 1596.871(c)(3), if the individual's criminal history meets specific criteria established by Department regulation.

(t) through (z) (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.74, 1596.75, 1596.77, 1596.770, 1596.78, 1596.791, 1596.81(b), 1597.44, and 1597.465, Health and Safety Code; and Government Code Section 244.

Amend Section 102370 to read:
Post-hearing: Amend Section 102370(c)(1)(A), (d) and (d)(1); repeal Section 102370(l) et seq.; and reletter Section 102370(m) and (m)(1) to (l) and (l)(1) and amend to read:

(b) The following individuals are exempt from the requirement to submit fingerprints:

(1) A volunteer who is a relative, legal guardian, or foster parent of a child in the facility.

(2) A volunteer that provides time-limited specialized services if all of the following apply:

(A) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(B) The volunteer spends no more than 16 hours per week at the facility.

(C) The volunteer is not left alone with children in care.

(3) A student who is enrolled or participating at an accredited educational institution if all of the following apply:

(A) The student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(B) The facility has an agreement with the educational institution concerning the placement of the student.

(C) The student spends no more than 16 hours per week at the facility.

(D) The student is not left alone with the children in care.

(4) A third-party repair person, or similar retained contractor, if all of the following apply:

(A) The individual is hired for a defined, time-limited job.

(B) The individual is not left alone with children.

(C) When children are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(5) A medical professional, as defined in Section 102352(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity if all of the following apply:

(A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

(B) The individual is providing time-limited specialized clinical care or services.

(C) The individual is providing care or services within the individual's scope of practice.

(D) The individual is not a community care facility licensee and is not employed, retained, or contracted by the licensee.

(6) Employees of a licensed home health agency who have a contract with a child's parent or guardian and are in the facility at the request of that parent or guardian.

(A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.

(7) An attendant or facilitator for a child with a developmental disability who is visiting the client or providing direct care and supervision to the child.

(A) The exemption shall not apply to an individual who is employed, retained or contracted by the licensee.

(c) All individuals subject to a criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.

(1) A person signing the LIC 508 must:

(A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 102370(g) <u>regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order</u>.

(B) If convicted of a crime other than a minor traffic violation as specified in Section 102370(g), provide information regarding the conviction.

(2) The licensee shall submit these fingerprints to the California Department of Justice along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 102370(j) prior to the individual's employment, residence, or initial presence in the child care home. (Continued)

(B) A licensee or an applicant for a license may not submit, or enable another to submit under the licensee's or the applicant's authority, the fingerprints of any person who does not, or whom the licensee or applicant reasonably believes will not reside, provide care and supervision to, or have contact with clients at the licensee's or applicant's facility.

1. If the Department determines that the licensee or applicant has violated Section 102370(c)(2)(B), the Department may immediately cease processing criminal record and Child Abuse Central Index clearances for the facility until the licensee or applicant complies with this section or a disciplinary proceeding is completed. (Continued)

(d) ~~Prior to employment, residence or initial presence in a licensed facility,~~ ~~a~~All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1596.871 shall prior to working, residing or volunteering in a licensed facility:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by the Department or

(2) Request a transfer of a criminal record clearance as specified in Section 102370(j) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

(e) Violation of Section 102370(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.

(1) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.

(f) Violation of Section 102370(d) may result in a denial of the license application or suspension and/or revocation of the license.

(g) If the criminal record transcript of any individuals specified in the Health and Safety Code Section 1596.871(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for a crime other than a minor traffic violation for which the fine was less than $300, and an exemption pursuant to Section 102370.1(a) has not been granted, the Department shall take the following actions: (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility. (Continued)

(h) and (i) (Continued)

(j) A licensee or applicant for a license may request a transfer of a criminal records clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:

(1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

HANDBOOK BEGINS HERE

(4) Section 1596.871(h)(2) of the Health and Safety Code states: (Continued)

HANDBOOK ENDS HERE

(k) (Continued)

~~(l) Any individual who is required to obtain or has obtained a criminal record clearance or exemption as a condition of association with, or licensure of, a facility shall report to the Department by telephone any subsequent arrest, conviction, or parole or probation violation within 48 hours of the event.~~

~~(1) Confirmation of the telephone report must be made in writing to the Department within seven calendar days. The written report shall include the following:~~

~~(A) The law enforcement agency and court involved;~~

~~(B) A detailed description of the events leading to the arrest, conviction, or parole or probation violation;~~

~~(C) The individual's current and pending legal involvement; and~~

~~(D) The individual's current address and phone number.~~

(~~m~~l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Section 1597.59, Health and Safety Code.

Amend Section 102370.1 to read:
Post-hearing: Amend Sections 102370.1(b)(1)(A), (b)(2), (c)(3)(E)1., (d), (o)(3), (p)(1), (u)(2), and (v) to read:

102370.1 CRIMINAL RECORD EXEMPTIONS 102370.1

(a) The Department will notify a licensee to act immediately to remove from the facility or bar from entering the facility any person described in Sections 102370.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1596.871(c)(2);

(4) Any person who has been convicted of any crime specified below:

(A) Battery

(B) Shooting at Inhabited Dwelling

(C) Corporal Injury on Spouse/Cohabitant

(D) Discharging Firearm with Gross Negligence

(E) Exhibiting Weapon/Firearm

(F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G) Criminal Threat to Harm or Injure Another Person

(H) Cruelty to Animals

(I) Willful Harm or Injury to Child; or

(5) Any other person ordered to be removed by the Department.

(6) The Department may assess a civil penalty of $50 per day for failure to comply with Section 102370.1(a).

(b) In addition to the requirements of Section 102370.1(a), the licensee must:

(1) Return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.

(A) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. ~~12/02~~ 9/03), Removal Confirmation - Denial, LIC 300B (Rev. ~~12/02~~ 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. ~~12/02~~ 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. ~~12/02~~ 9/03).

(B) The Department may assess a civil penalty of $50 per day for failure to comply with Section 102370.1(b).

(2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. ~~03/01~~ 5/03) to one parent or authorized representative of every child currently in care within one day of receipt of the addendum from the Department.

(A) Upon notice from the Department that the individual may return to the facility, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in care within one day of receipt of the notice and addendum from the Department.

(3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in 102370.1(b)(2) and (2)(A).

(4) Maintain copies of the signed and dated receipt required in Section 102370.1(b)(3) in each child's file. Copies shall be made available to the Department upon request.

(c) If it is found that the applicant or any other person residing at or regularly in the home during the hours of care, has ever been convicted of a crime other than a minor traffic infraction as specified in Section 102370.1(b), the application for licensure shall be denied or the license shall be revoked, unless the following apply: (Continued)

(3) The Department shall consider factors, including, but not limited to, the following, as evidence of good character and rehabilitation:

(A) The nature of the offense committed including, but not limited to, whether it involved violence or a threat of violence to others. (Continued)

(E) Character references.

1. All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. ~~9/02~~ 7/03]). (Continued)

(G) Evidence of honesty and truthfulness as revealed in exemption application documents.

1. Documents include, but are not limited to:

a. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev 1/03]) and (Continued)

(4) The Department shall also consider the following factors in evaluating a request for an exemption:

(A) Facility and type of association.

(B) The individual's age at the time the crime was committed.

(d) To request a criminal record exemption, ~~individuals~~ licensee or license applicants must submit information that indicates that ~~he/she~~ the individual meets the requirements of Section 102370.1(c)(2)(D). The Department will send a written notice to the licensee or license applicant that lists the information that must be submitted to request a criminal record exemption. The information must be submitted within ~~thirty (30)~~ forty-five (45) days of the date of the Department's notice.

(1) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing the information required by Section 102370.1(c)(2)(D) and any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 102370.1(c)(3).

(2) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an employee or resident other than a spouse or a dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

(3) If the individual ~~who requests a~~ for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information ~~requested~~ listed in the Department's written notice within ~~30~~ 45 days of the date of the notice, the Department may deny the exemption request.

(4) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:

(A) Chooses not to request the exemption and

(B) Terminates the individual's employment because of the individual's criminal history, or

(C) Removes the individual who resides in the facility because of the individual's criminal history.

(e), (f) and (g) (Continued)

(h) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:

(1) Makes a knowingly false or misleading statement regarding:

(A) Material relevant to their application for a criminal record clearance or exemption,

(B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or

(C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or

(2) Is on probation or parole.

(A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 102370.1(h)(2).

(i) The Department shall consider granting a criminal record exemption for an individual when the individual's criminal record history meets all of the applicable criteria specified in Sections 102370.1(i)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good behavior as specified in Section 102370.1(c)(2)(D). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6) The individual has not been convicted of a violent felony.

(7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 102370.1(i)(1) through (5) above shall begin from the last date of conviction(s).

(j) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 102370.1(i)(1) through (6).

(k) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1596.871(f) of the Health and Safety Code.

HANDBOOK BEGINS HERE

Health and Safety Code Section 1596.871(f) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

(1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.

(2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.

(3) Penal Code Section 203 – Any mayhem.

(4) Penal Code Section 206 - Felony torture.

(5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.

(6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.

(7) Penal Code Section 215 – Carjacking.

(8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.

(9) Penal Code Section 243.4 – Sexual battery.

(10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.

(11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.

(12) Penal Code Section 264.1 – Rape in concert.

(13) Penal Code Section 266 – Enticing a minor into prostitution.

(14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.

(15) Penal Code Section 266h(b) – Pimping a minor.

(16) Penal Code Section 266i(b) – Pandering a minor.

(17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.

(18) Penal Code Section 267 – Abduction for prostitution.

(19) Penal Code Section 269 – Aggravated assault of a child.

(20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).

(21) Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.

(22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.

(23) Penal Code Section 285 – Incest.

(24) Penal Code Section 286 – Sodomy.

(25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.

(26) Penal Code Section 288a – Oral copulation.

(27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.

(28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

(29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.

(30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.

(31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.

(32) Penal Code Section 311.3 – Sexual exploitation of a child.

(33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.

(34) Penal Code Section 311.10 – Advertising or distributing child pornography.

(35) Penal Code Section 311.11 – Possessing child pornography.

(36) Penal Code Section 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.

(37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.

(38) Penal Code Section 368 – Elder or dependent adult abuse.

(39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.

(40) Penal Code Section 451(a) or (b) – Arson.

(41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.

(42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.

(43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

(44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.

(45) Penal Code Sections 664/187 – Any attempted murder.

(46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

(47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.

(48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.

(49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.

(50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.

(51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.

(52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

(l) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 102370.1(l)(1) through (4) below:

(1) The individual does not have a demonstrated pattern of criminal activity;

(2) The individual has no more than one conviction;

(3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

(m) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.

(n) If the Department denies or cannot grant a criminal record exemption the Department will:

(1) For initial applicants, deny the application. (Continued)

(3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1596.8897, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.

(o) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section102370.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.

(1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective

date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

(2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.

(3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 102370.1(o)(1) above, the Department may, in ~~its discretion~~ accordance with the provisions in Section 102370.1 et seq., grant or deny the subsequent request for an exemption.

(4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 102370.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(p) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. ~~3/02~~ 9/03).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles, or

(C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.

(3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

(q) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:

(1) The basis on which the Department granted the exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients in the facility where the individual wishes to transfer;

(5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or

(6) Whether the exemption meets current exemption laws or regulations.

(r) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(s) At the Department's discretion, an exemption may be rescinded if it is determined that:

(1) The exemption was granted in error or

(2) The exemption does not meet current exemption laws or regulations or

(3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

(t) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(u) If the Department rescinds an exemption the Department shall:

(1) Notify the licensee and the affected individual in writing; and

(2) Initiate ~~the appropriate~~ an administrative action.

(v) If the Department learns that an individual has been convicted of a crime after obtaining a criminal record clearance or exemption, the Department, at its sole discretion, may initiate ~~the appropriate~~ an administrative action to protect the health and safety of clients.

Authority Cited: Sections 1596.81 and 1596.871, Health and Safety Code.

Reference: Sections 1596.81(b), 1597.59(b), 1596.885, and 1596.8897, Health and Safety Code; and Section 42001, Vehicle Code.

Amend Section 102370.2 to read:
Post-hearing: Amend Section 102370.2(b) to read:

102370.2 CHILD ABUSE CENTRAL INDEX 102370.2

(b) Subsequent to licensure, all individuals subject to a criminal record review, pursuant to Health and Safety Code Section 1596.871 shall complete a Child Abuse Central Index check (LIC 198A [3/99]) for state licensed facilities and LIC 198 [4/99] for county licensed facilities), prior to employment, residence or initial presence in the family child care home.

(1) The licensee shall submit the Child Abuse Central Index checks (LIC 198A [~~3/99~~ 02/01] for state licensed facilities and LIC 198 [02/01] for county licensed facilities), directly to the California Department of Justice at the same time that the individual's fingerprints are submitted for a criminal background check as required by Section 102370(c)(2). (Continued)

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.81(b) and 1596.871, Health and Safety Code.

Amend Section 102395 to read:
Post-hearing: Amend Section 101395(a)(1), repeal Section 102395(a)(1)(A) and renumber Section 102395(a)(1)(A)1. to (a)(1)(A) to read:

102395 PENALTIES 102395

(a) An immediate penalty of $100 per cited violation shall be assessed for the following:

(1) Failure to obtain a ~~Department of Justice~~ California clearance or criminal record exemption, request a transfer of a criminal record clearance or request and be approved for a transfer of an exemption as specified in Section 102370(d) for any individual required to be fingerprinted under Health and Safety Code Section 1596.871 prior to the individual's employment, residence or initial presence in the facility.

(A) ~~Violation of Section 102370(d) will result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars ($100) per violation by the Department.~~

~~(i)~~ The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1596.871.

(2) (Continued)

Authority Cited: Sections 1596.81 and 1596.8712(g), Health and Safety Code.

Reference: Sections 1596.871, 1596.8712(d) and 1596.99, Health and Safety Code.

Amend Section 102416(d) to read:
Post-hearing: Amend Section 101416(d)(1) to read:

102416 PERSONNEL REQUIREMENTS (Continued) 102416

(d) Prior to employment or initial presence in the child care home, all employees and volunteers subject to a criminal record review shall:

(1) Obtain a ~~Department of Justice~~ California clearance or a criminal record exemption as required by law or Department regulations or

(2) Request a transfer of a criminal record clearance as specified in Section 102370(j) or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 102370.1(p), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.866, 1596.880, 1596.881, and 1596.882, Health and Safety Code.

Adopt New Section 102416.1 to read:

102416.1 PERSONNEL RECORDS 102416.1

(a) Personnel records shall be maintained on each employee and shall contain the following information:

(1) Employee's full name.

(2) Driver's license number if the employee is to transport children.

(3) Date of employment.

(4) Date of birth.

(5) Current home address and phone number.

(6) Documentation of completion of training on preventative health practices as required by Section 102416(c).

(7) Past experience, including types of employment and former employers.

(8) Duties of the employee.

(9) Termination date if no longer employed.

(10) A signed and dated copy of the Notice of Employee Rights [LIC 9052, (Rev. 03/03)] as required by Section 102416(a) and Section 102417.

(11) A signed statement regarding their criminal record history as required by Section 102370(c).

(12) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 102370(d).

(b) Personnel records shall be maintained for all volunteers and shall contain the following:

(1) For volunteers that are required to be fingerprinted pursuant to Section 102370:

(A) A signed statement regarding their criminal record history as required by Section 102370(c).

(B) Documentation of either a criminal record clearance or a criminal record exemption as required by Section 102370(d).

(c) All personnel records shall be kept for at least three years following termination of employment/volunteer work.

(d) All personnel records shall be maintained at the child care home and shall be available to the licensing agency for review.

Authority Cited: Sections 1596.81 and 1596.871, Health and Safety Code.

Reference: Sections 1596.81, 1596.871, 1596.885 and 1596.8897, Health and Safety Code.

Amend Section 102417 to read:
Post-hearing: Amend Section 102417(r)(2) to read:

102417 OPERATION OF A FAMILY CHILD CARE HOME (Continued) 102417

(r) Upon notice from the Department to remove an individual from the home, pursuant to Health and Safety Code Section 1596.871(c)(2), or to exclude an individual from the home, pursuant to Health and Safety Code Section 1596.8897, the licensee shall;

(1) Immediately remove the individual and prevent the individual from returning to the home or having contact with children in care.

(2) Provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B, Rev. ~~03/01~~ 05/03) to one parent or authorized representative of every child currently in care within one day of receipt of the notice and addendum from the Department.

(A) Upon notice from the Department that the individual may return to the home, provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C, Rev. 03/01) to one parent or authorized representative of every child currently in care within one day of receipt of the notice and addendum from the Department.

(3) Obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Section 102417(r)(2).

(4) Maintain copies of the signed and dated receipt required in Section 102417(r)(3) in each child's file. Copies shall be made available to the Department upon request.

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.72, 1596.73, 1596.78, 1596.81(b), 1596.841, 1596.846(b) and (c), 1596.880, 1596.881, 1596.882, 1597.30, 1597.44, 1597.45, 1597.46, 1597.465, 1597.531, and 1597.54(b)(2), Health and Safety Code.

Amend Section 102419 to read:
Post-hearing: Amend Section 102419(h) to read:

102419 ADMISSION PROCEDURES AND PARENTAL AND AUTHORIZED REPRESENTATIVE'S RIGHTS (Continued) 102419

(h) The licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Removal/Exclusion) (LIC 995B Rev. ~~03/01~~ 05/03) sent by the Department, that is still in effect, to one parent or authorized representative of every child when the parent or authorized representative arranges for child care services or on the first day the child receives care, whichever is first.

(1) Upon notice from the Department that the excluded/removed individual may return to the facility, the licensee shall provide a copy of the Addendum to Notification of Parent's Rights (Regarding Reinstatement) (LIC 995C Rev. 03/01) to one parent or authorized representative of every child in care within one day of receipt of the notice and addendum from the Department.

(i) The licensee shall obtain a signed and dated receipt from one parent or authorized representative that acknowledges that he/she was given a copy of the addendum specified in Sections 102419(h) and (h)(1).

(j) The licensee shall maintain copies of the signed and dated receipt required in Section 102419(i) in each child's file. Copies shall be made available to the Department upon request.

Authority Cited: Section 1596.81, Health and Safety Code.

Reference: Sections 1596.72, 1596.73, 1596.853, 1596.857, 1596.859, 1596.872, 1596.874, 1597.07, 1597.30, and 1597.56, Health and Safety Code.

Date: _____

CONFIRMATION OF REMOVAL FOR: _____

This is to confirm that the Department of Social Services, Caregiver Background Check Bureau, informed you that the person identified above must be removed from your facility/home. The individual must be removed because of the nature of his/her criminal history.

If you wish to have the individual return to your facility/home, the individual must have a criminal record exemption. To request an exemption on the individual's behalf, you must submit the information outlined in the Immediate Action Required letter sent to you.

To confirm that the individual has been removed from your facility/home, you must sign below and return the entire notice, **within five (5) days** of the date of this notice to the address below. Retain a copy of the signed notice for your records.

Regional Office _____

Address _____

City/State/Zip Code _____

Failure to immediately remove the individual and return this notice within five (5) days will result in an assessment of civil penalties and/or a disciplinary action including suspension of your license. If you have any questions regarding this letter, you may contact your local regional office at (____) _____.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses are true and correct. I confirm that the individual named above has been removed from the facility/home.

DATE INDIVIDUAL WAS REMOVED: _____

NAME OF PERSON COMPLETING THIS FORM: _____

TITLE: _____

SIGNATURE: _____

c: _____

Date: _____

CONFIRMATION OF REMOVAL FOR: _____

This is to confirm that the Department of Social Services, Caregiver Background Check Bureau, informed you that the person identified above must be removed from your facility/home. The individual must be removed because his/her criminal record exemption has been denied.

To confirm that the individual has been removed from your facility/home, you must sign below and return the entire notice, **within five (5) days** of the date of this notice to the address below. Retain a copy of the signed notice for your records.

Regional Office _____

Address _____

City/State/Zip Code _____

Failure to immediately remove the individual and return this notice within five (5) days will may result in an assessment of civil penalties and/or a disciplinary action including suspension of your license. If you have any questions regarding this letter, you may contact your local regional office at ( ) _____.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses are true and correct. I confirm that the individual named above has been removed from the facility/home.

DATE INDIVIDUAL WAS REMOVED: _____

NAME OF PERSON COMPLETING THIS FORM: _____

TITLE: _____

SIGNATURE: _____

c: _____

Date: _____

CONFIRMATION OF REMOVAL FOR: _____

This is to confirm that the Department of Social Services, Caregiver Background Check Bureau, informed you that the person identified above must be removed from your facility/home. The individual must be removed because his/her criminal record exemption has been rescinded.

To confirm that the individual has been removed from your facility/home, you must sign below and return the entire notice, **within five (5) days** of the date of this notice to the address below. Retain a copy of the signed notice for your records.

Regional Office: _____

Address _____

City/State/Zip Code _____

Failure to immediately remove the individual and return this notice within five (5) days will result in an assessment of civil penalties and/or a disciplinary action including suspension of your license. If you have any questions regarding this letter, you may contact your local regional office at ( ) _____.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses are true and correct. I confirm that the individual named above has been removed from the facility/home.

DATE INDIVIDUAL WAS REMOVED: _____

NAME OF PERSON COMPLETING THIS FORM: _____

TITLE: _____

SIGNATURE: _____

c: _____

Date: _____

CONFIRMATION OF REMOVAL FOR: _____

This is to confirm that the Department of Social Services, Caregiver Background Check Bureau, informed you that the person identified above must be removed from your facility/home. The individual must be removed because he/she has been convicted of a crime for which an exemption cannot be granted.

To confirm that the individual has been removed from your facility/home, you must sign below and return the entire notice, **within five (5) days** of the date of this notice to the address below. Retain a copy of the signed notice for your records.

Regional Office _____

Address _____

City/State/Zip Code _____

Failure to immediately remove the individual and return this notice within five (5) days will result in an assessment of civil penalties and/or a disciplinary action including suspension of your license. If you have any questions regarding this letter, you may contact your local regional office at ( ) _____.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses are true and correct. I confirm that the individual named above has been removed from the facility/home.

DATE INDIVIDUAL WAS REMOVED: _____

NAME OF PERSON COMPLETING THIS FORM: _____

TITLE: _____

SIGNATURE: _____

c: _____

REFERENCE REQUEST FOR: _____

To operate or work in facility type: _____

You must enter your full name and facility type before you give this form to your reference for completion.

The above named person has applied to operate, work or reside in a community care facility serving the client group indicated above. This person has selected you to write a reference statement on his/her behalf. **If you work at the facility, are a client of the facility, or are related to this person in any way, you may not complete this reference statement.**

Please complete the entire form. Your honest reply will help us ensure high quality care in our licensed facilities.

Your Name: _____

Street Address: _____

City _____ State _____ Zip _____

Day Time Telephone Number: (_____) _____

1. How long have you known the person you are writing this reference for? _____

2. How do you know this person? _____

REFERENCE REQUEST FOR: _____

3. Please give your opinion of this person's character. _____

4. Please describe any interaction you have observed between this person and the client group he/she is requesting to work with. For example: Clients may be children, developmentally disabled children or adults, mentally impaired adults, or elderly. _____

5. Please add any comments you feel are relevant about this person and his/her desire to work in a community care facility. _____

PRINT YOUR NAME	YOUR SIGNATURE	DATE

CRIMINAL RECORD STATEMENT

State law requires that persons associated with licensed facilities be fingerprinted and disclose any conviction. A conviction is any plea of guilty or nolo contendere (no contest) or a verdict of guilty. The fingerprints will be used to obtain a copy of any criminal history you may have.

Have you ever been convicted of a crime in California ? . . . . . ☐ YES ☐ NO

Have you ever been convicted of a crime from another state, federal court, military or jurisdiction outside of U.S.? . . . . . ☐ YES ☐ NO

Criminal convictions from another State or Federal court are considered the same as criminal convictions in California.

If you answer YES, give details on the back of this page indicating the nature and circumstances of each crime and the date and the location in which each crime occurred.

You must disclose convictions, including reckless and drunk driving convictions even if:

1. It happened a long time ago;
2. It was only a misdemeanor;
3. You didn't have to go to court (your attorney went for you);
4. You had no jail time or the sentence was only a fine or probation;
5. You received a certificate of rehabilitation;
6. The conviction was later dismissed, set aside or the sentence was suspended.

NOTE: IF THE CRIMINAL BACKGROUND CHECK REVEALS ANY CONVICTION(S) THAT YOU DID NOT DISCLOSE ON THIS FORM, YOUR FAILURE TO DISCLOSE THE CONVICTION(S) WILL RESULT IN AN EXEMPTION DENIAL, LICENSE APPLICATION DENIAL, LICENSE REVOCATION, OR EXCLUSION FROM A LICENSED FACILITY.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses and any accompanying attachments are true and correct.

FACILITY NAME		FACILITY NUMBER	
YOUR NAME *(PRINT CLEARLY)*	YOUR ADDRESS	CITY	ZIP
SOCIAL SECURITY NUMBER *(SEE PRIVACY STATEMENT ON REVERSE SIDE)*	DATE OF BIRTH	DMV LICENSE NUMBER	
SIGNATURE		DATE	

I. Instructions to Respondents:

If you have been convicted of a crime in California or from another state or in federal court, provide the following information:

What was the offense? _____

_____

_____

_____

In which state and city did you commit the offense? _____

_____

_____

When did this occur? _____

_____

_____

Tell us what happened. (Use additional sheets of paper if needed) _____

_____

_____

_____

_____

_____

I certify under penalty of perjury that the above information is true and correct to the best of my knowledge.

Signature _____ ***Date*** _____

II. Instructions to Licensees:

If the person discloses a criminal conviction, review the person's statement and discuss it with your Licensing Program Analyst (LPA). Maintain this form in your facility personnel file and send a copy to your LPA.

PRIVACY STATEMENT

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code section 1798 et seq.), notice is given for the request of the Social Security Number (SSN) on this form. The California Department of Justice uses a person's SSN as an identifying number. The requested SSN is voluntary. Failure to provide the SSN may delay the processing of this form and the criminal record check.

In order to be licensed, work at, or be present at, a licensed facility, the law requires that you complete a criminal background check. (Health and Safety Code sections 1522, 1568.09, 1569.17 and 1596.871) The Department will create a file concerning your criminal background check that will contain certain documents, including information that you provide. You have the right to access certain records containing your personal information maintained by the Department (Civil Code section 1798 et seq.). Under the California Public Records Act, the Department may have to provide copies of some of the records in the file to members of the public who ask for them, including newspaper and television reporters.

NOTE: IMPORTANT INFORMATION
The Department is required to tell people who ask, including the press, if some one in a licensed facility has a criminal record exemption. The Department must also tell people who ask, the name of a licensed facility that has a licensee, employee, resident, or other person with a criminal record exemption.

If you have any questions about this form, please contact your local licensing regional office.

CRIMINAL RECORD STATEMENT

Foster Family Homes, Small Family Homes, Certified Family Homes

State law requires that a person associated with licensed facilities be fingerprinted, and disclose any conviction. A conviction is any plea of guilty or nolo contendere (no contest) or a verdict of guilty. The fingerprints will be used to obtain a copy of any criminal history you have.

Have you ever been convicted of a crime in California? ☐ YES ☐ NO

Have you ever been convicted of a crime from another state, federal court, military or jurisdiction outside of the U.S.? ☐ YES ☐ NO

For Foster Family and Certified Family Homes only:
Have you ever been arrested for a crime against a child or for spousal/cohabitant abuse? ☐ YES ☐ NO

Criminal convictions from another State or Federal court are considered the same as criminal convictions in California.

If you answer YES, give details on the back of this page indicating the nature and circumstances of each crime and the date and location in which each crime occurred.

You must disclose convictions, including reckless and drunk driving convictions even if:

1. It happened a long time ago;
2. It was only a misdemeanor;
3. You didn't have to go to court (your attorney went for you);
4. You had no jail time or the sentence was only a fine or probation;
5. You received a certificate of rehabilitation;
6. The conviction was later dismissed, set aside or the sentence was suspended.

NOTE: IF THE CRIMINAL BACKGROUND CHECK REVEALS ANY CONVICTION(S) THAT YOU DID NOT DISCLOSE ON THIS FORM, YOUR FAILURE TO DISCLOSE THE CONVICTION(S) WILL RESULT IN AN EXEMPTION DENIAL, LICENSE APPLICATION DENIAL, LICENSE REVOCATION, OR EXCLUSION FROM A LICENSED FACILITY.

I declare under penalty of perjury under the laws of the State of California that I have read and understand the information contained in this affidavit and that my responses and any accompanying attachments are true and correct.

FACILITY NAME		FACILITY NUMBER	
YOUR NAME (PRINT CLEARLY)	YOUR ADDRESS	CITY	ZIP
SOCIAL SECURITY NUMBER *(SEE PRIVACY STATEMENT ON REVERSE SIDE)*	DATE OF BIRTH	DMV LICENSE NUMBER	
SIGNATURE		DATE	

I. Instructions to Respondent:

If you have been convicted of a crime in California, another state, or in federal court, provide the following information:

What was the offense? _____

_____

_____

In which State and City did you commit the offense? _____

_____

_____

When did this occur? _____

_____

_____

Tell us what happened. (Use additional sheets of paper if needed) _____

_____

_____

_____

_____

_____

_____

_____

_____

I certify under penalty of perjury that the above information is true and correct to the best of my knowledge

Signature _____ *Date* _____

II. Instructions to Licensees:

If the person discloses a criminal conviction, review the person's statement and discuss it with your Licensing Program Analyst (LPA). Maintain this form in your facility personnel file and send a copy to your LPA.

PRIVACY STATEMENT

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798 Et Seq.), notice is given for the request of the Social Security Number (SSN) on this form. The California Department of Justice uses a person's SSN as an identifying number. The requested SSN is voluntary. Failure to provide the SSN may delay the processing of this form and the criminal record check.

In order to be licensed, work at, or be present at, a licensed facility, the law requires that you complete a criminal background check. (Health and Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.) The Department will create a file concerning your criminal background check that will contain certain documents, including information that you provide. You have the right to access certain records containing your personal information maintained by the Department (Civil Code section 1798 et seq.) Under the California Public Records Act, the Department may have to provide copies of some of the records in the file to members of the public who asks for them, including newspaper and television reporters.

If you have any questions about this form, please contact your local licensing regional office.

FAMILY CHILD CARE HOME
ADDENDUM TO NOTIFICATION OF PARENTS' RIGHTS
(REGARDING REMOVAL/EXCLUSION)

California State law requires the licensee to notify you that the person whose name appears below has been removed or excluded from this Family Child Care Home.

Name: _____

Effective Date: _____

This person **is not permitted to be in the home** at <u>any time</u> when children are in care. This removed/excluded person may be an ex-employee, friend or relative of the licensee. This person has a right to appeal the exclusion. If he/she is later permitted back into the Family Child Care Home you will be notified.

The local licensing office listed below maintains a public file on this facility. Parents or authorized representatives may review the public file for any documents related to this action. You should know that many documents are protected by confidentiality laws and will not be available for review.

Licensing Office Name: _____

Licensing Office Address: _____

City/State/Zip: _____

Name And Address of This Facility

Facility Name: _____

Facility Address: _____

City/State/Zip: _____

ACKNOWLEDGMENT OF
ADDENDUM TO NOTIFICATION OF PARENTS' RIGHTS
(REGARDING REMOVAL/EXCLUSION)

This will acknowledge that I, the parent/authorized representative of _____ have received a copy of the "ADDENDUM TO NOTIFICATION OF PARENTS' RIGHTS (REGARDING REMOVAL/EXCLUSION)" from the licensee or designated representative. *(Parent/Authorized Representative signature is required).*

_____ Signature of Parent/Authorized Representative

_____ Date

NOTE: This form with the original signature of the parent/authorized representative must be kept in the child's file. A copy of this form must be given to the parent/authorized representative.

FAMILY CHILD CARE HOME
ADDENDUM TO NOTIFICATION OF PARENTS' RIGHTS
(REGARDING REINSTATEMENT)

The law requires the licensee to notify you that the person whose name appears below **is now allowed to be present** in the Family Child Care Home.

Name: _____

Effective Date: _____

After either a careful and thorough review by the Department, or an Administrative Law Judge, this person may now be in the Family Child Care Home when children are in care.

Licensing Office Name: _____

Licensing Office Address: _____

City/State/Zip: _____

Name And Address of This Facility:

Facility Name: _____

Facility Address: _____

City/State/Zip: _____

ACKNOWLEDGMENT OF
ADDENDUM TO NOTIFICATION OF PARENTS' RIGHTS
(REGARDING REINSTATEMENT)

This will acknowledge that I, the parent/authorized representative of _____ have received a copy of the "ADDENDUM TO NOTIFICATION OF PARENTS' RIGHTS (REGARDING REINSTATEMENT" from the licensee or designated representative. *(Parent/Authorized Representative signature is required).*

_____ Signature of Parent/Authorized Representative

_____ Date

NOTE: This form with the original signature of the parent/authorized representative must be kept in the child's file. A copy of this form must be given to the parent/authorized representative.

NOTICE

EMPLOYEE RIGHTS

Instructions:

This form is intended to meet the requirements of Health and Safety Code Sections 1596.881 and 1596.882 which require that employees be informed of their rights, at the time of employment, to filing complaints against their employer for violating any licensing law or regulation. The child care facility licensee is required to give the employee this form, to have the employee complete and detach the bottom of the form, and to maintain the signed acknowledgement of receipt of the form in the employee's file.

No employer shall discharge, demote, suspend or threaten to discharge, demote or suspend, or in any manner discriminate against any employee for taking any of the following actions:

1. Making an oral or written complaint against the employer to the California Department of Social Services or other agency having statutory responsibility for enforcement of the law or to the employer or representative of the employer for the violation of any licensing law or other laws (including but not limited to laws relating to child abuse, staff-child ratios, etc.).
2. Instituting or causing to be instituted any proceeding against the employer regarding the violation of any licensing law or other laws.
3. Is, or will be, a witness or testifier in a proceeding regarding the violation of any licensing law or other law.
4. Refusing to perform work that is in violation of a licensing law or regulation after notifying the employer of the violation.

Pursuant to Health and Safety Code Section 1596.882, an employee alleging the violation by the employer of any action described above shall do the following:

1. Present the employer with a claim alleging violation of the employee's rights within 45 days after the discharge, demotion, suspension or threat thereof or for discriminating against the employee for taking such action.
2. File a claim with the Division of Labor Standards Enforcement no later than 90 days after the employer takes any of the above described actions against the employee.

Upon receipt of the employee's complaint, the Division of Labor Standards Enforcement shall do whatever investigation it deems appropriate to resolve the complaint. If it is determined that the employer has violated the employee's rights, the Division of Labor Standards Enforcement shall take action against the employer in any appropriate court. The court shall have jurisdiction of any action taken as well as to issue restraining orders and any other appropriate relief, including rehiring and reinstatements of the employee to his or her former position with backpay and benefits.

Within 30 days of receipt of a complaint from an employee as outlined above, the Division of Labor Standards Enforcement shall review the facts of the complaint and set either a hearing date or notify the employee and the employer of its decision. Where necessary, the Division of Labor Standards Enforcement shall begin the appropriate court action to enforce the decision.

Except for any grievance procedure or arbitration or hearing that is available to the employee pursuant to a collective bargaining agreement, Section 1596.882 is the exclusive means for presenting claims.

To file a claim with the Division of Labor Standards Enforcement, check the white pages of the local telephone directory under State Government Offices, California State of, Industrial relations Department, Labor Standards Enforcement-Working Conditions, for the local telephone number and address of the nearest office, or contact the headquarters office at P.O. Box 603, San Francisco, CA 94101, telephone (415) 703-4810.

(Detach Here)

- -

(This form is to be retained in the employee's file)

EMPLOYEE RIGHTS

This is to acknowledge that I _____ have received a copy of
(PLEASE PRINT NAME OF EMPLOYEE)

"EMPLOYEE RIGHTS" from my employer _____, who is the
(PLEASE PRINT NAME OF EMPLOYER)

licensee or authorized representative of _____
(PLEASE PRINT NAME OF FACILITY)

_____ (SIGNATURE OF EMPLOYEE)

_____ (DATE)

CRIMINAL BACKGROUND CLEARANCE TRANSFER REQUEST

Active criminal record clearances may be transferred from one state licensed facility to another by a license applicant or licensee. Clearances cannot be transferred from a state licensed facility to a county licensed facility, or from county to state. **The transfer request must be submitted to the Department before the individual who is the subject of the transfer has client contact or the facility will be in violation of the law and subject to a $100 civil penalty.**

The license applicant or licensee who is seeking the transfer must verify the individual's identity and include a copy of the person's driver's license or a valid photo identification issued by the California Department of Motor Vehicles or by another state or the United States government if the person is not a California resident. Additionally, a Child Abuse Central Index (CACI) check must be submitted **if** the transfer is to a facility serving children and the individual has not previously submitted a CACI check or the date of the previous CACI inquiry was made prior to January 1, 1999. The CACI must be mailed directly to the Department of Justice with the applicable fee. *Note: This transfer request is for clearances only. Contact your licensing office for information about exemption transfers.*

PLEASE TYPE OR PRINT LEGIBLY

DATE:

PLEASE TRANSFER THE CRIMINAL RECORD CLEARANCE FOR THE FOLLOWING INDIVIDUAL:

LAST NAME | FIRST NAME | MIDDLE INITIAL

CA DRIVER'S LICENSE #/OR ID #: | DOB:

LICENSING INFORMATION SYSTEM ID#: | SSN: (OPTIONAL)

FROM THE FOLLOWING FACILITY:

NAME OF FACILITY: | FACILITY NUMBER:

STREET ADDRESS:

CITY | STATE | ZIP CODE:

TO THE FOLLOWING FACILITY: ☐ PLEASE ALSO KEEP THIS INDIVIDUAL ASSOCIATED WITH ABOVE FACILITY.

NAME OF FACILITY:

FACILITY NUMBER: | DATE OF EMPLOYMENT:

STREET ADDRESS:

CITY | STATE | ZIP CODE:

Transferee Association Type

- ☐ Facility Administrator
- ☐ Corporation Board Member
- ☐ Employee
- ☐ Certified Home
- ☐ Licensee/Applicant
- ☐ Non-client Adult Resident
- ☐ Partnership Member
- ☐ Spouse of Licensee

I certify I have verified the above individual's identity and have enclosed a copy of the individual's photo I.D.

Signature

Title *(licensee, administrator, director)*

FOR DISTRICT OFFICE USE ONLY

DATE OF TRANSFER ENTRY: | INITIAL OF PERSON ENTERING TRANSFER:

FILE IN NEWLY ASSOCIATED FACILITY FILE

CRIMINAL RECORD EXEMPTION TRANSFER REQUEST

Active criminal record exemptions may be transferred from one state licensed facility to another by a license applicant or licensee. Exemptions cannot be transferred from a state licensed facility to a county licensed facility or from county to state. **The transfer must be approved by the Department before the individual who is the subject of the transfer has client contact or the facility will be in violation of the law and subject to a $100 civil penalty.**

The license applicant or licensee who is seeking the exemption transfer must verify the individual's identity and include a copy of the person's driver's license or a valid photo identification issued by the California Department of Motor Vehicles or by another state or the United States government if the person is not a California resident. Additionally, a Child Abuse Central Index (CACI) check must be submitted **if** the exemption transfer is to a facility serving children and the individual has not previously submitted a CACI check or the date of the previous CACI inquiry was prior to January 1, 1999. The CACI must be mailed directly to the Department of Justice with the applicable fee.

PLEASE TYPE OR PRINT LEGIBLY

DATE:

PLEASE TRANSFER THE CRIMINAL RECORD EXEMPTION FOR:

LAST NAME | FIRST NAME | MIDDLE INITIAL

CA DRIVER'S LICENSE # or ID #: | DOB:

LICENSING INFORMATION SYSTEM ID #: | SSN: (OPTIONAL) ___ ___

FROM THE FOLLOWING FACILITY:

NAME OF FACILITY: | FACILITY NUMBER:

STREET ADDRESS:

CITY | STATE | ZIP CODE

TO THE FOLLOWING FACILITY:

NAME OF FACILITY:

FACILITY NUMBER: | DATE OF EMPLOYMENT:

STREET ADDRESS:

CITY | STATE | ZIP CODE

Transferee Association Type

- ☐ Facility Administrator
- ☐ Corporation Board Member
- ☐ Employee
- ☐ Certified Home
- ☐ Licensee/Applicant
- ☐ Non-client Adult Resident
- ☐ Partnership Member
- ☐ Spouse of Licensee

I certify I have verified the above individual's identity and have enclosed a copy of the individual's photo I.D.

Signature

Title *(licensee, administrator, director)*

FOR DISTRICT OFFICE USE ONLY

DATE OF EXEMPTION TRANSFER ENTRY: | INITIAL OF PERSON ENTERING TRANSFER:

FILE IN NEWLY ASSOCIATED FACILITY FILE