

87355 Criminal Record Clearance

(a)

The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1569.17 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.

(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 criminal record clearance or exemption.

(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).

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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).

(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 87355(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 87355(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 shall take appropriate action as specified in 87355(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 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 87355(c), prior to the individual's employment, residence, or initial presence in the facility.

(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 87355(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 87355(h), provide information regarding the conviction.

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(B)

If convicted of a crime other than a minor traffic violation as specified in Section 87355(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 shall take appropriate action as specified in 87355(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.

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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 87355(c), prior to the individual's employment, residence, or initial presence in the facility.

(e)

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) Submit a valid mailing address at which the individual shall receive communications from the Department. (A) An individual who holds a criminal record clearance or exemption shall maintain a current and valid mailing address with the Department and shall notify the Department within ten (10) days of any change in mailing address. (2) Obtain a California clearance or a criminal record exemption as required by the Department or (3) Request a transfer of a criminal record clearance as specified in Section 87355(c) or (4) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87356(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

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shall notify the Department within ten (10) days of any change in mailing address.

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Obtain a California clearance or a criminal record exemption as required by the Department or

(3)

Request a transfer of a criminal record clearance as specified in Section 87355(c) or

(4)

Request and be approved for a transfer of a criminal record exemption, as specified in Section 87356(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 87355(e) shall result in a citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five (5) days by the Department.(1)

Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days. (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.49.

(1)

Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.

(2)

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

(g)

Violation of Section 87355(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 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 87356(a) has not been granted, the Department shall take the following actions specified in Health and Safety Code section 1569.17(c). (1) For an initial applicant, the Department may 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 and 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, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1569.58 and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.

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For current licensees, the Department may institute an administrative action, including,

but not limited to, revocation of the license.

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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.

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For individuals residing in the facility, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1569.58 and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.

(i)

The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record clearance.

(j)

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 87412, Personnel Records.

(k)

The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility. (1) Documentation shall be available at the facility for inspection by the Department.

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(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.

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(m)

An individual with arrest history described in Health and Safety Code section 1569.17(e), shall be notified of the following: (1) The fact of the investigation into conduct associated with arrest information regarding the subject. (2) The specific arrest(s) upon which the investigation is based. (3) The date of the arrest(s). (4) The arresting agency. (5) The disposition of the arrest(s), if available, as indicated on criminal history information received from DOJ. (6) The subject shall not work or reside in a licensed facility until the subject has received a criminal record clearance or exemption. (7) If the Department obtains evidence through the investigation that the subject may pose a risk to the health and safety of any person who is or may become a client, the Department may deny a criminal record clearance and/or exclude the subject. (8) The subject may provide written information the subject believes is relevant to the investigation and/or shows the subject is qualified to work in a licensed facility. (9) The subject will be notified of the Department's decision regarding whether or not to grant a clearance and of the right to appeal any such decision at that time.

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The arresting agency.

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The disposition of the arrest(s), if available, as indicated on criminal history information received from DOJ.

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The subject shall not work or reside in a licensed facility until the subject has received a criminal record clearance or exemption.

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If the Department obtains evidence through the investigation that the subject may pose a risk to the health and safety of any person who is or may become a client, the Department may deny a criminal record clearance and/or exclude the subject.

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The subject may provide written information the subject believes is relevant to the investigation and/or shows the subject is qualified to work in a licensed facility.

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The subject will be notified of the Department's decision regarding whether or not to grant a clearance and of the right to appeal any such decision at that time.

(n)

The Department shall, in cases where the subject does not have a conviction,

within 5 business days of a decision to deny a criminal record clearance based on an investigation described in subdivision (m) notify the subject of the following:

(1) The Department has completed its investigation into arrest information. (2) The Department will not grant that individual a criminal record clearance. (3) The decision, if not appealed, will bar the subject from presence in a licensed facility. (4) The arrest which triggered the investigation, including the date of arrest, charges, and arresting agency. (5) The CDSS has determined that the subject may pose a risk to the health and safety of a person who is or may become a client. (6) The specific conduct upon which the decision is based. (7) The subject has a right to contest the decision and will receive an Accusation from the Legal Division as well as information about how to request an administrative hearing.

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(6)

The specific conduct upon which the decision is based.

(7)

The subject has a right to contest the decision and will receive an Accusation from the Legal Division as well as information about how to request an administrative hearing.

(o)

For initial applications, where the subject does not have a conviction, the Accusation described in paragraph (7) of subdivision (n) shall be filed within 40 days of a decision to deny a criminal record clearance.