California State Auditor

BUREAU OF STATE AUDITS

Department of Social Services:

To Ensure Safe, Licensed Child Care Facilities, It Needs to More Diligently Assess Criminal Histories, Monitor Facilities, and Enforce Disciplinary Decisions

August 2000
2000-102

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August 2, 2000 2000-102

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the Department of Social Services (department) and its processes for licensing and monitoring child care facilities throughout California.

This report concludes that state law gives the department wide discretion to decide if people with criminal histories should care for or have contact with children—wider discretion than the criminal background check standards set for public school teachers. In 1999 alone, the department granted criminal history exemptions to 95 percent of those individuals who requested one. Based on our review, the department needs to exercise greater caution when utilizing its discretion to grant criminal history exemptions. Moreover, the department interprets state law regarding Federal Bureau of Investigation (FBI) check requirements in a way that does not fully protect children and may have inappropriately licensed or allowed individuals to work in child care facilities without first reviewing their FBI criminal histories. In addition, the department needs to improve how it monitors child care facilities after licensure. Finally, the department should process its legal cases against child care facility owners, operators, employees, and residents more quickly and provide its staff with clear policies on enforcing these legal decisions.

Respectfully submitted,

Steven M Hendrickson
for

MARY P. NOBLE
Acting State Auditor

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SUMMARY

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As the State's agency for licensing and monitoring child care facilities, the Department of Social Services:

- ☑ *Has wide discretion for granting criminal history exemptions and allowing people who have committed crimes to care for or come in contact with children.*
- ☑ *Has allowed its staff to make exemption decisions with little or no management oversight.*
- ☑ *Should exercise more caution when granting criminal history exemptions.*
- ☑ *May not have implemented Federal Bureau of Investigation check requirements such that children are fully protected.*
- ☑ *Does not always follow up on complaint investigations or perform required, timely facility evaluations.*
- ☑ *Imposes appropriate disciplinary actions against child care facility licensees but does not effectively enforce these actions once the decisions are made.*

RESULTS IN BRIEF

The Department of Social Services (department), the agency that licenses and monitors child care facilities in California, must protect children's safety by using diligence and sound judgment in its oversight. State law gives the department wide discretion to decide if people with criminal histories should care for or have contact with children—wider discretion than the criminal background standards set for public school teachers. In 1999 alone, the department allowed 95 percent of those who requested criminal history exemptions—2,200 individuals—to care for or have contact with children. Although the department has wide discretion, it needs to exercise greater caution when granting criminal history exemptions. Among those the department approved were a self-disclosed nine-year crack cocaine user who claimed to have been recovered for only one year and an individual with mental disorders who had assaulted another person. In accordance with department policy, staff made exemption decisions with little or no management review. Although the department has recently acted to improve its procedures in some of these critical areas, it needs to do more to sufficiently protect children.

Another area of concern is that the department's interpretation of state law regarding Federal Bureau of Investigation (FBI) check requirements may have resulted in the department inappropriately issuing licenses or allowing individuals to work in child care facilities without first reviewing their FBI criminal histories. Also, the Department of Justice (Justice) does not always notify the department about subsequent arrests or convictions of individuals for whom the department has granted criminal history exemptions. Finally, the department's practice of not requiring child care facility owners, operators, employees, or adult residents to disclose their criminal history exemptions to clients leaves parents without the information they need to keep their children healthy and safe.

The department should improve how it monitors child care facilities after licensure. For example, the department's district offices do not always follow up on complaint investigations, perform all necessary facility evaluations, or conduct these

evaluations within the required time. Also, the department's oversight of district and county offices is weak, thus lessening its assurance that these offices are administering the child care facility licensing program appropriately.

The department's disciplinary decisions against child care facility license holders (licensees) appear reasonable, based on our review of legal actions that resulted in negotiated settlements. Most settlements involved probation. The department's settlement process and strict probationary terms help ensure that licensees commit to correcting deficiencies. However, the department is slow to process some of its legal cases. The department's deadline for bringing action against individuals—six months after the district office's request—is hard to justify because by the time legal action is requested, the district office has already determined that legal action is necessary. Finally, although the district offices are responsible for enforcing legal decisions, the department has not given those offices clear policies to follow. Consequently, the district offices' enforcement efforts are not always timely, consistent, or thorough.

RECOMMENDATIONS

To ensure that the department does not grant criminal history exemptions to individuals that may pose a risk to children:

- The Legislature should assess the department's level of discretion to exempt individuals with criminal histories. Additionally, to make child care criminal history standards comparable to those used for public school teachers, the Legislature should consider pursuing laws to increase the range of crimes that automatically deny a criminal history exemption.

- The Legislature should clarify the existing FBI check requirements to specify whether an individual can have contact with children while the department conducts the FBI check.

- The department should continue its new criminal history exemptions review procedures and expand this process to include a periodic review of a representative sample of all exemptions granted.

- The department should exercise more caution when granting exemptions and actively consider all available information. To the extent that the department believes it needs statutory changes to appropriately carry out its responsibilities, the department should seek such changes.

To provide children with the continued protection they deserve, Justice should establish a system to track and immediately notify the department of crimes individuals commit subsequent to the department's criminal history review.

To assist parents in making informed decisions about child care facilities, the department, working with the Legislature, should:

- Require individuals to disclose their criminal history exemptions to parents.

- Determine the types of criminal histories and lengths of time for the disclosure requirement, such as disclosing for five years an exemption received for certain convictions and serious arrests.

To ensure that child care facilities are operating in compliance with state law and regulations, the department should make certain that all necessary complaint follow-ups occur and that it conducts facility evaluations within the required timelines.

To make certain that district and county offices licensing child care facilities are operating effectively and in accordance with state laws and regulations, the department should:

- Periodically review each county's child care facility licensing operations.

- Ensure that regional offices periodically and consistently assess the operations of district offices.

To more quickly process all legal cases it receives, the department should strive to shorten its goal of filing a case pleading, currently set at six months after receiving the case, and then ensure that the new goal is met.

To allow the district offices to enforce all legal decisions promptly, effectively, and consistently, the department should implement policies and procedures establishing when a district office must visit a child care facility to determine if the individual is complying with the department's decision.

AGENCY COMMENTS

Overall, the department concurred with the recommendations in this report and outlined some steps it has begun to take to implement our recommendations. In addition, the Office of the Attorney General concurred with the recommendations we made for improving Justice's processes related to child care licensing and described steps it is taking to implement those recommendations. ■

INTRODUCTION

BACKGROUND

The Department of Social Services' (department) Community Care Licensing Division (division) is responsible for regulating and protecting the health and safety of children and adults in out-of-home care. More specifically, the division licenses and monitors child and adult care facilities as well as nonmedical residential facilities for children and adults.

A child care facility license is not needed if a person cares for a relative's children or children from only one family unrelated to the person, such as a neighbor's children. In all other circumstances, state law requires an individual to have a license to provide child care. The number of children cared for further defines the facility type and the laws and regulations the child care facility owner or operator must follow.

Types of Child Care Facilities

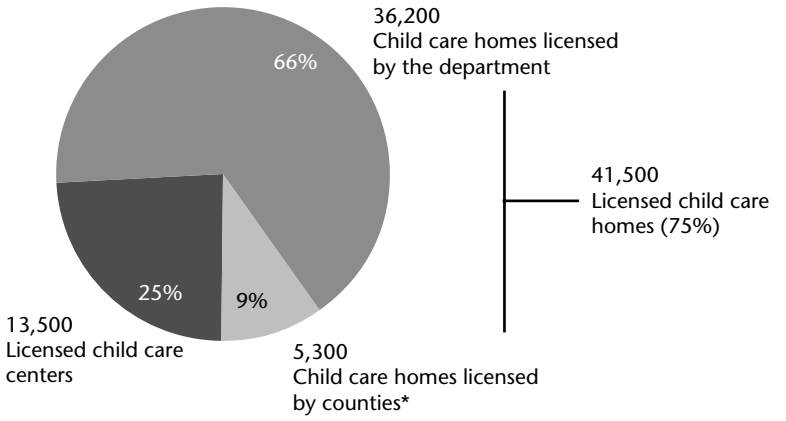
Child Care Homes—Child care is provided in a private residence with a 'home-like' setting. Child care homes are licensed to serve a maximum of 14 children (8 children or less in "small homes," and 7 to 14 in "large homes"). Under the law, staff are required to have only minimal training.

Child Care Centers—These facilities are usually located in a commercial setting and serve 15 or more children. By law, child care centers operate in a more structured way, and staff are generally trained in early childhood education.

To provide the necessary child care licensing services and perform effective monitoring across the State, the division is broken into four regional offices: northern, coastal, southern, and Los Angeles. The regions oversee the operations of 13 district offices as well as 10 counties. Although the State licenses the majority of child care facilities, the law gives the department the option of contracting with the counties to license certain child care facilities within their boundaries. Currently, 10 counties in California have contracted with the department; however, the counties' licensing authority is limited to child care homes. The district offices license all child care centers in the State. Despite the counties' limited licensing authority, the district offices and counties have similar responsibilities: issuing child care facility licenses and ensuring that the facilities comply with applicable laws and regulations. Figure 1 shows that, as of December 1999, there were approximately 55,000 licensed child care facilities in the State serving approximately 1 million children.

FIGURE 1

Number of Licensed Child Care Facilities as of December 1, 1999



* Del Norte, Fresno, Inyo, Marin, Mendocino, Sacramento, Santa Cruz, Sutter, Tehama, and Yolo counties.

THE DEPARTMENT'S LICENSING PROCESS

The department, through its 13 district offices and 10 contracted counties, uses a formal screening process to license child care homes and centers. The licensing process begins with an orientation for potential child care facility license holders (licensees), which outlines the licensee's roles and responsibilities and how to complete the license application. The process also entails a mandatory criminal history check, conducted by the department's Caregiver Background Check Bureau, a physical inspection of the proposed facility, and a review of the applicant's qualifications. Once the department or county issues a facility license, it is valid until the licensee closes or moves the facility, or until the department takes action to suspend or revoke the license.

A critical element of the department's licensing process is the criminal history check. By law, all licensees, their employees, and adults living in child care facilities (usually child care homes) must submit to criminal history checks. The department uses criminal history checks to determine if individuals should be allowed to care for or be in close proximity to children. The criminal history check includes a review of records from the Department of Justice (Justice) detailing arrests for certain crimes and all convictions in California and, as of January 1999, a search of Federal Bureau of Investigation (FBI) records.

The criminal history check process begins when an individual submits a set of fingerprints to Justice. Justice processes the fingerprints and sends the department either a clearance form indicating no history of arrests and/or convictions in California or a criminal record transcript (rap sheet). As of September 1999, based on a court ruling stemming from *Central Valley v. Younger* concerning individual privacy, Justice can only disclose convictions and certain statutorily defined serious arrests. Prior to the court order, Justice issued rap sheets listing every arrest and disposition an individual had in California, including charges that were dismissed.

Because children's health and safety may be at risk, state law prohibits anyone with a criminal conviction from caring for children or living in a child care facility. However, the law also gives the department authority to grant exemptions to individuals, as it sees fit, although it cannot grant an exemption to anyone who has committed certain crimes listed in statute, such as murder and rape. When the department receives a rap sheet for an individual, usually it must immediately notify the potential licensee, the owner or operator of the child care center (in the case of a new employee), or the employee personally that a criminal history exemption is needed. In the case of a new employee, the department must also decide if the criminal history is such that the individual should be kept out of the child care facility until the department makes its exemption decision. If the department determines that the new employee's criminal history does not pose a risk to the safety of children, the individual is allowed to work until the department processes the exemption request. Otherwise, the new employee may not work unless and until the department reviews his or her criminal history and grants an exemption. In contrast, an individual with a criminal history cannot receive a license to own or operate a child care facility until the department grants an exemption.

When reviewing an exemption request, the department considers information such as the nature and number of convictions the individual has, the length of time between the exemption request and the conviction, and signs of rehabilitation and remorse. Using this information, the department assesses whether the individual poses a risk to children. If no risk is perceived, the department grants the exemption. In addition, when a criminal record indicates an arrest with no disposition, such as a conviction or dismissal, the department has the authority to investigate the events surrounding the arrest. If the

department can prove through an arrest record or other obtainable information that an individual poses a threat to the safety of children, it can deny an exemption.

Although the criminal history check process includes a review of records from both Justice and the FBI, the department performs each record review separately. If an individual has a criminal history outside California, it should show up in the FBI records. However, according to the law, the department can allow an individual to become a licensee or employee of a child care facility or to live in a child care facility before the FBI records review is complete. Specifically, if an individual meets all other licensing requirements and declares, under penalty of perjury, that he or she has not been convicted of a crime, the department can allow the individual to operate, work in, or live in a child care facility while the FBI check is pending. If the department subsequently receives an FBI rap sheet, it must reassess the individual's history and redetermine the risk posed to children. If a risk is perceived, the child care license is revoked or the individual is kept from employment in a child care facility.

THE DEPARTMENT'S COMPLIANCE VISITS

After issuing a child care facility license, the department conducts several kinds of visits and evaluations to ensure that the facility is complying with established licensing laws and regulations. For example, state law requires the department to evaluate each child care center annually and each child care home every three years. The department's licensing program analysts (analysts) visit each facility to determine whether it is complying with licensing laws, and when necessary, the analysts give verbal or written consultations, issue citations, or assess penalties.

The department also performs several other types of visits and evaluations—including prelicensing evaluations, case management visits, and complaint visits—to ensure that each licensed child care facility is operating in a safe and healthful manner. The most common type of visit the department makes, excluding annual or triennial evaluations, is a complaint visit made in response to allegations by parents or others that a licensee is violating licensing laws or regulations. The department is required to visit the facility within 10 calendar days after receiving the complaint. If the complaint is substantiated, the department and licensee prepare a plan to correct the deficiency.

The department is then required to follow up to make certain that the licensee has made the necessary corrections. Allegations of serious physical and sexual abuse are generally investigated by specially trained staff in the department's Regional Investigation Section.

THE DEPARTMENT'S LEGAL DISCIPLINE PROCESS

The department has a system of progressive disciplinary actions against child care facility licensees, employees, or adult residents who demonstrate that they cannot comply with licensing laws and regulations. After repeated offenses, the department can take legal action in the form of probation terms, exclusion from child care facilities, and license revocations. The department's legal division must first file an accusation against the individual who allegedly committed a violation. That person has two options: either request a judge, an impartial third party, to hear the case in a formal trial-like setting and render a decision, or allow the department to impose disciplinary actions by default. If the person requests a hearing at anytime before the judge renders a decision, he or she may try to negotiate a settlement with the department. Whatever way the decision is made, it is binding on the individual, and the department and the appropriate district office are responsible for enforcing it.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (JLAC) requested the Bureau of State Audits to assess the department's policies and practices for licensing and monitoring child care facilities. Included in our study are child care facility licensees, employees, and adult residents with criminal histories to whom the department has granted exemptions. Although the department contracts with 10 counties to license and monitor child care homes, our review focused on the department's direct licensing and monitoring activities and how the department ensures that the counties license and monitor child care homes in accordance with state laws and regulations.

To understand the department's licensing process, we reviewed the relevant laws and regulations and the department's policies for licensing child care facilities. At three district offices, one each in the northern, coastal, and Los Angeles regions, we reviewed the department's methods for ensuring that individuals

meet the requirements for operating a child care facility prior to licensure. This included a review of license applications, prelicensing facility visits, and criminal history checks.

Additionally, we examined 25 cases involving criminal history exemption requests to determine whether the department's criminal history check process was effective and efficient. Specifically, we assessed whether the 25 cases met the department's screening criteria, the department's exemption decisions were reasonable, and the cases were processed promptly. We also reviewed Justice's process for preparing and distributing required criminal history information, when the department is assessing an individual's background for a criminal history as well as when an individual commits crimes subsequent to the department's initial review. Although we determined from our sample that Justice appropriately reviews and edits rap sheets in accordance with a recent court ruling, Justice does not always notify the department when an individual whose background the department has previously reviewed commits a crime. We discuss this concern in Chapter 1.

To determine whether the department effectively monitors individuals once they are licensed, we reviewed its process for investigating and following up on complaints against licensees and others. We also reviewed the department's process of conducting required facility evaluations. Further, we reviewed the department's processes for overseeing district offices in their licensing and monitoring of child care facilities in accordance with state law and the department's policies and procedures. We similarly assessed the department's oversight of the 10 counties contracted to license child care homes.

We also studied state laws and other relevant materials regarding the department's disciplinary process. We reviewed legal action cases to determine whether the department processes these cases promptly, in accordance with both legal and internal policy requirements. In addition, we looked at cases the department successfully negotiated to assess whether the outcome was reasonable based on the case facts. Reviewing legal cases also allowed us to determine what steps the department took to enforce the legal action decisions and whether these steps were taken promptly and were sufficient to ensure that the individual complied with the decision.

Lastly, the JLAC requested us to compile statistical data on the department's child care facility licensing process. To accomplish this task, we requested and received from the department the licensing statistics presented in Appendix A. Although we asked for it, the department was unable to provide summary information on the types of crimes individuals committed regardless of whether the department granted or denied the exemption. However, in Appendix B, we present the number of arrests, charges filed, and felony and misdemeanor convictions of each individual within our sample. In addition, the department could not provide data on the number of licenses it revokes each year due to criminal activity that Justice did not report prior to licensing. ■

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CHAPTER 1

The Department's Evaluations of Criminal Histories Should Be More Cautious, Thorough, and Timely

CHAPTER SUMMARY

State law gives the Department of Social Services (department) the authority to decide when people with criminal histories can care for or come in contact with children in child care homes and centers. To protect children's health and safety, the law prohibits anyone with a past criminal conviction from owning, operating, working in, or living in a licensed child care facility. However, the law also allows the department to grant criminal history exemptions to most individuals as it sees fit, and the department exercises wide discretion in carrying out this task. In fact, the department's records show that in 1999, it approved exemptions for more than 2,200 individuals with criminal histories—95 percent of all those who requested them. In our study of 25 individuals who were granted exemptions in 1998 and 1999, we concluded that the department needs to conduct more thorough and timely criminal investigations before granting exemptions. Moreover, the department does not require individuals to disclose criminal history exemptions to parents, who might assume that all individuals with criminal histories are barred from owning, operating, working in, or living in child care facilities. Weaknesses in the department's process of checking criminal histories may put the health and safety of children at risk.

The department uses considerable latitude in its assessment of criminal histories. Among our sample of 25 individuals who received exemptions that allowed them to own, operate, work in, or live in child care facilities despite their criminal histories, 10 had at least one felony conviction, and 1 had four felony convictions, including drug possession, theft, and burglary.

Our sample study also revealed weaknesses in the thoroughness of the department's criminal history check process. The department bases its decisions primarily on conviction information and may not sufficiently consider other facts of which it

is aware. For example, we found that the department issued a criminal history exemption to a woman who was convicted of prostitution but disclosed an apparent nine-year crack cocaine addiction. At the time of her exemption request, the woman had been recovered for only one year. Further, in most of the cases we studied, supervisors in the department did not review the criminal exemption decisions that its staff made. Moreover, the department is interpreting state law regarding Federal Bureau of Investigation (FBI) check requirements in a manner that does not fully protect children.

We also found that the department does not always complete its criminal history exemption process in a timely manner. This is a result of delays by department staff as well as the failure of municipal agencies to forward information promptly in response to the department's requests. Furthermore, although the Department of Justice (Justice) is supposed to track the individuals the department approves and notify the department whenever one of those individuals is subsequently convicted of a crime or arrested for certain serious crimes, Justice does not always make this notification. As a result, the department is not always able to assess if an individual presents a risk to children after the initial background check. Finally, because the law does not require child care facility owners, operators, employees, or adult residents to disclose their criminal history exemptions, parents are often unaware that a person with a background of criminal activity is caring for or in contact with their children.

Recently, the department has made efforts to improve some aspects of its process of licensing child care facilities, such as establishing stricter criteria for granting criminal history exemptions and improving its supervision of staff. However, further improvements are needed to ensure the safety of children in child care facilities.

THE DEPARTMENT HAS SIGNIFICANT DISCRETION WHEN ISSUING CRIMINAL HISTORY EXEMPTIONS

Although state law prohibits anyone with a past criminal conviction from caring for children or residing in a licensed child care facility, the law also gives the department broad authority to grant exemptions to this rule. Additionally, the law states that, if the department can prove through an arrest and other obtainable information that an individual poses a threat to the safety of children, it can deny an exemption. To fulfill the

law, the department assesses the criminal history (arrests and/or convictions) of every individual applying to own, operate, or work in a child care home or center and any adult living in a child care home. The existence of this process may have led to a perception gap: Parents and the public may believe that most applicants with criminal histories are not allowed to care for children—whereas in reality the department can and does allow former convicted criminals to own and work in child care centers and homes. State law expressly prohibits the department from exempting people convicted of such crimes as murder or rape; however, it allows the department to consider for exemption individuals who have committed other crimes, even felonies such as spousal battery and assault with a deadly weapon. In fact, the department's record of granting exemptions is quite high: In 1999, it approved 95 percent of the exemption requests it received. Further, despite the intimate and extended interaction that child care facility operators and employees have with children, their criminal history requirements are less stringent than those for public school teachers who have less daily contact with children and work in a more public setting.

State law prohibits the department from exempting individuals convicted of certain crimes, including:

- Murder
- Manslaughter
- Mayhem
- Rape
- Carjacking
- Robbery
- Kidnapping

We reviewed the criminal histories of 25 randomly selected individuals the department granted exemptions to in 1998 and 1999 and found that 10 individuals had at least one felony conviction. As shown in Table 1, the criminal histories of these 10 individuals cover a wide spectrum of crimes: 1 had been arrested five times and convicted of six offenses for drugs, theft, and burglary, while another had one arrest, charge, and conviction for welfare fraud 21 years before the department granted the exemption. Three people had five or more arrests and nine or more criminal charges filed against them. Additionally, the department granted criminal history exemptions to 5 individuals with two or more convictions, of which at least one was a felony.

The last column in Table 1 shows the time passed since each individual was last arrested and charged with a crime. We believe this information is more relevant to the person's character than the time it took the courts to resolve the issue. This column shows that these 10 individuals had not been arrested and charged for four years or more. However, the full results of our review of 25 exemptions, which are shown in Appendix B, demonstrate that the department approved individuals with a

broad range of criminal histories and that some of them had engaged in criminal activity as recently as one year before receiving an exemption. We present the number of arrests and charges in Table 1 and Appendix B because, at one time, the department received all charges filed on arrest for individuals whose backgrounds it reviewed. However, after September 1999, because of privacy concerns, a court ruling stemming from *Central Valley v. Younger* limited the amount of arrest information Justice could disclose to the department to certain serious arrests listed in statute.

TABLE 1

Criminal Histories of Ten Individuals With Felony Convictions Granted Exemptions in 1998 and 1999

Sample Number	Arrests	Charges Filed	Convictions		Nature of Felony Convictions	Years From Last Arrest to Granting Exemption
			Felony	Misdemeanor		
1	5	9	4	2	Theft, burglary, possession of controlled substance (2 counts)	4
2	2	2	2	0	Possession of controlled substance (2 counts)	11
3	2	2	2	0	Taking vehicle without owner's consent, illegal purchase of wire or metal	6
4	10	11	1	2	Burglary	12
5	6	9	1	1	Transportation of controlled substance	7
6*	2	2	1	0	Hit and run involving death or injury	8
7	1	1	1	0	Welfare fraud	21
8*	1	2	1	0	Aid/abet falsification of insurance claim	5
9	1	2	1	0	Welfare fraud	5
10	1	1	1	0	Unemployment insurance fraud	7

* Due to a court order, Justice sent an edited rap sheet to the department rather than a rap sheet showing all criminal activity for these individuals. Therefore, these listings may not show the total number of arrests and charges.

We also noted a difference between the State's criminal history requirements for child care facility owners, operators, and employees and those for public school teachers. Compared with public school teachers, child care facility owners, operators, and employees are generally working with a younger, more vulnerable population; are often in contact with children for longer periods of time each day; and work in less public settings.

The discretion that the department has under state law to decide if people with criminal histories should care for children is wider than the criminal background standards set for public school teachers.

Despite these differences, state law still makes it easier for child care facility owners, operators, and employees to obtain criminal history exemptions. For example, according to state law, a potential public school teacher with a controlled substance conviction cannot receive an exemption for at least five years after going through rehabilitation, while state law does not require a potential child care facility owner, operator, or employee to complete a waiting period. In addition, the list of felonies that prevent a person from becoming a teacher, unless they receive a certificate of rehabilitation from the courts and a gubernatorial pardon, is much more extensive than that for a potential child care facility owner, operator, or employee. For instance, under state law, a person convicted of assault that could lead to great harm or death of a child younger than eight years of age cannot work as a school teacher, but state law does not prohibit the department from granting the same person an exemption to own, operate, or work in a child care facility.

In May 2000, the department implemented stricter criteria for granting exemptions. Staff now must enforce a minimum waiting period—time elapsed since the individual completed probation or parole for the most recent conviction—before considering the individual for a criminal history exemption. The exact amount of time depends on the number and type of convictions on the individual's record. However, the crimes that staff can consider for exemption have not changed, which still leaves the department with a great deal of discretion in granting criminal history exemptions.

THE DEPARTMENT SHOULD USE GREATER CAUTION WHEN GRANTING CRIMINAL HISTORY EXEMPTIONS

The department was motivated to assess its criminal history exemption policies and procedures in late 1999, after revoking the license of a child care home operator to whom it had previously granted a criminal history exemption. As a result of that case, the department concluded that its exemption procedures were inadequate and that its staff may have too much latitude in granting exemptions. Our review of 25 exemptions confirmed that the department's own policies contributed to poor decision making. Among these department policies was a lack of management review of exemption decisions. We found that department management reviewed and approved only 2 of the 25 cases we reviewed, with staff making exemption decisions for the remaining 23 cases without management

review. In addition, the department did not sufficiently consider information other than convictions or deem important an applicant's lack of honesty in filing for an exemption. Although the department is implementing new procedures with stricter exemption criteria and increased supervisory review, additional improvements can be made.

In 1997, the department granted a child care home license to an individual whose criminal convictions included felony arson, felony and misdemeanor grand theft, felony receipt of stolen property, and misdemeanor false identification to a peace officer. Within the first five months of the facility's operation, the department received five allegations that it was improperly run. The department took disciplinary action against the child care facility license holder (licensee) and closed the facility in late 1999. After reviewing this case, the department concluded that this exemption decision appeared to be a "serious error in judgment."

After reviewing an exemption it granted in 1997 to an individual with multiple felony convictions, the department decided it apparently made a "serious error in judgment."

Prior to May 2000, department policies and procedures called for staff to make final decisions on exemption requests, unguided and unapproved by management. Staff used a department manual that described a review process but set no standards for determining whether to grant or deny an exemption. For example, the manual instructed staff to consider factors such as the nature of the criminal activity, the amount of time since the most recent conviction, and whether the individual showed remorse or evidence of rehabilitation. However, it did not provide guidelines regarding how much or what kind of criminal activity is acceptable for an individual to still qualify for an exemption. Also, managers did not review most decisions. In our sample of 25 cases, management reviewed and approved only 2. In accordance with these procedures, the department has allowed individuals with histories of significant criminal activity to own, operate, work in, or live in child care facilities.

In one case, the department granted a criminal history exemption to a woman convicted of prostitution who disclosed she had used crack cocaine for nine years and had been off drugs only one year. In another instance, the department granted an exemption to a woman who disclosed she was taking medication for mental disorders and was convicted of assaulting someone. The staff are making significant decisions—determining an individual's fitness to care for or be in close proximity to children. Although we are not aware that any harm came to children in her care, the woman who used crack cocaine for nine years was

The department granted a criminal history exemption to a woman convicted of prostitution who disclosed she had used crack cocaine for nine years and had been off drugs only one year.

Just five months after receiving her exemption, the woman was convicted of felony drug possession.

convicted of felony drug possession just five months after receiving her exemption. Her actions demonstrate that she was not fit to care for children despite the department's decision.

The department believes that it was appropriate to grant exemptions to these two individuals. Stating that it can only consider conviction information when making an exemption decision, the department indicates that drug use and mental instability were not elements of the individuals' convictions. Further, the department claimed that it could not investigate the circumstances of the apparent crack cocaine addict's 1997 arrest for drug possession because, although the department was aware of the arrest, this particular offense was not a serious arrest as defined by statute. Moreover, the department believes it does not have the authority to deny an exemption based solely on a self-disclosed mental illness and, if it did so, would risk violating the Americans With Disabilities Act.

We recognize that state law directs the department to consider convictions when granting criminal history exemptions. However, according to state law, the department must also have substantial and convincing evidence that persons convicted of crimes are of sufficient "good character" to warrant an exemption. We question whether an apparent addiction to crack cocaine reflects the character of someone who should be made responsible for caring for children. We question why, having received information that an individual used drugs over a long period of time, the department did not take further steps to fully understand the individual's drug history before granting the criminal history exemption. Recently, the department acknowledged that drug offenses should be on the serious arrest list and has assisted in preparing legislation to make that addition. Despite the limitations imposed by the court's ruling in *Central Valley v. Younger*, such legislation would give the department authority to consider drug arrests when granting an exemption.

Regarding the individual who disclosed she had mental disorders, state regulations require that the department ensure that individuals it allows to care for or come in contact with children are "physically and mentally capable of performing assigned tasks." Furthermore, the department's district offices have authority to request mental health screenings of all individuals they suspect have mental problems. In our second example, although the woman disclosed her mental health condition to the

department's Caregiver Background Check Bureau, it did not forward the information to the responsible district office, so the district office was unable to request such a screening.

Historically, the department has placed little emphasis on an individual's lack of honesty when completing criminal history disclosure forms.

Another weakness in the department's policies regarding criminal history checks was its lack of emphasis on an individual's dishonesty in completing required forms. The department requires individuals to fill out a form on which they must state, under penalty of perjury, what crimes, if any, they have received convictions for. In 6 of the 25 exemption cases we reviewed, the individuals lied on this form, since the rap sheets Justice subsequently provided indicated criminal activities that the individuals had not disclosed. Two people had not disclosed their most serious convictions, and four claimed to have never been convicted of any crimes. By not truthfully completing the form, these individuals committed yet another crime—perjury—but the department still granted their criminal exemptions.

During our audit, the department implemented new procedures in an attempt to address these problems. Its new instructions to staff require them to deny exemptions to individuals who have not waited a certain minimum number of years after completing probation or parole. The length of the waiting period depends on the number of convictions and whether they were felonies, misdemeanors, or violent crimes. Management must approve any exceptions to the guidelines. Under these procedures, assuming each person within our sample of 25 served only a three-year probation term, 11 would have been denied criminal history exemptions, unless management waived the new policy, because not enough time had passed since they completed their probation.

The department also has instructed staff to judge more critically anyone who lies on the criminal history disclosure form and therefore commits perjury. Under these new procedures, 6 of the 25 exemption cases we reviewed might have been judged more critically because they committed perjury on their applications. However, unless management determined otherwise, 4 of the 6 cases would have been denied an exemption because they did not meet the required waiting periods.

Although these improvements more clearly define exemption criteria than previous procedures, the department only implemented them in May 2000, so it is too early to determine their effect on the department's decisions to grant exemptions. Further, some problems with the department's procedures are

Although the department has implemented new criminal history procedures, most exemption decisions will not undergo management review.

still unresolved. Even though managers must now review all criminal history exemption cases involving felony convictions, the new procedures do not provide for management review of most cases. In fact, even under the new procedures, a manager would not have reviewed more than 60 percent of the cases in our sample of 25 because the individuals had no felony convictions. Yet, the importance and complexity of the decision-making process has not changed and merits at least a periodic management review of a representative sample of exemptions to ensure that the appropriate decisions are made. Additionally, the new procedures do not require staff to deny exemptions to individuals with recent drug problems or investigate situations in which individuals reportedly have mental disorders. Therefore, once the necessary time had elapsed for past convictions, both the individual who used crack cocaine and the individual with mental disorders discussed earlier would still have been eligible to care for children.

CRIMINAL HISTORY CHECKS ARE OFTEN SLOW AND ARE NOT ALWAYS COMPLETE

The department has some fixed timelines for processing criminal history exemptions; however, it is not always able to work within these timelines—sometimes because its own processing delays and sometimes because of the delays of other agencies. Occasionally, the department requests information from municipal agencies, such as courts and local law enforcement, to clarify events surrounding an arrest or confirm a conviction; however, the municipal agencies can be slow to respond. In addition, these agencies sometimes do not report all their arrests and convictions to Justice, which can result in incomplete criminal history checks. Because the department under state law may allow new employees of licensed child care facilities to work while their criminal history checks are pending, the department's exemption processing delays and lack of complete information may put children in the care of people who pose a threat to their safety. In addition, because an individual cannot operate a child care facility before the department completes its criminal history review, these delays impede the person's right to work.

Department guidelines require it to notify "immediately" any person for whom it has received a rap sheet from Justice. The individual then must usually request a criminal history exemption to own, operate, work in, or live in a child care facility. Once the

Because employees can work in a child care facility pending the department's criminal history check, the department's delays may put children in the care of people who pose a threat to their safety.

department has received an exemption request, its policy is to review and approve or deny the request within 45 days. In 4 of the 25 criminal history exemption cases we reviewed, the department took 34 to 134 days to notify individuals that they needed to file for exemptions. In the longest case, the person was allowed to care for children for more than four months before the department, based on its review of the individual's criminal history, determined that the person had to be removed from the facility while the department made its assessment. In 5 cases, the department's decisions to grant exemptions ranged from 5 to 204 days past the 45-day guideline. In 1 case, the department failed to consider whether the individual had a history of child abuse and had to delay granting the exemption for roughly 180 days while it completed the criminal history check. Another case took 85 days to process, in part, because the department had to wait one month for a local court to supply information.

The chief of the department's Caregiver Background Check Bureau told us that delays in notifying individuals happened only during a limited period of time when clerical staffing levels were not adequate to handle incoming rap sheets promptly. He also stated that he uses a tracking system to identify cases that are falling behind the 45-day processing schedule and that delays in granting exemptions occurred when employees were on leave or were waiting for individuals or municipal agencies to submit requested information. Despite the chief's assertions, the delays in notifying individuals that exemptions were needed occurred throughout 1998 and again in 1999. Thus, this problem does not appear to be limited to a specific time frame. In addition, our sample case review shows that the tracking system is not effective in preventing delays, especially the initial notice to individuals that an exemption is needed. Moreover, many of these individuals work with children in licensed child care facilities while their exemptions are pending, and the department has a responsibility to see that these facilities are safe places for children.

Municipal Agencies Report Incomplete Arrest and Conviction Information

For every crime, the appropriate municipal agency should report to Justice an arrest and a disposition—a conviction, acquittal, dismissal, or some other resolution. Justice uses this information to construct its database of criminal histories. However, Justice estimates that municipal agencies do not report 20 percent to

25 percent of arrests or convictions, and therefore its files show arrests without dispositions and vice versa. Our study confirmed that information is often missing. We reviewed 20 files to determine if the rap sheets displayed arrests and corresponding dispositions and found 9 (45 percent) that lacked either arrest or conviction information. Further, Justice believes that for some crimes, it is not made aware of both arrests and dispositions. In fact, in the 25 exemption cases we reviewed, two individuals disclosed to the department that they had been convicted of crimes, but Justice's database showed no record of either the arrests or the convictions.

Justice estimates that municipal agencies do not report 20 percent to 25 percent of arrests or convictions.

Although the cases we found with incomplete information involved crimes that were not "serious arrests," as defined by statute, a municipal agency could fail to report a murder or rape just as easily as a petty theft. Using incomplete crime information severely limits the department's ability to make fully informed criminal history assessments and increases its risk of allowing someone with a potentially threatening criminal history to care for or come in contact with children at a child care facility.

Justice has established an advisory committee to resolve the nonreporting issue. The advisory committee is promoting the electronic transmission of fingerprints to Justice and electronic access by Justice to municipal court records. Electronically transmitted fingerprints arrive at Justice automatically when the person is fingerprinted at the police station, and electronic access to court records allows Justice to investigate possible gaps in its database without having to coordinate with municipal court officials. Justice estimates that 75 percent to 80 percent of the fingerprints it receives now come in electronically but stated that only a minority of courts offer electronic access. Justice believes that, because many courts still rely heavily on hard copy record keeping, only a few courts in the State are able to support such an electronic interface.

The steps Justice is taking appear beneficial, but further measures are needed to fully solve the problem of nonreporting municipal agencies. Justice will need to do more work to determine what methods will be most effective. Until Justice can ensure accurate crime reporting, the department risks granting exemptions to individuals it may have otherwise rejected.

THE DEPARTMENT'S FBI BACKGROUND CHECK PROCEDURES ARE QUESTIONABLE

The department is interpreting state law regarding FBI background checks in a manner that does not fully protect children. Additionally, the department did not follow its own procedures in place before 1999 for requesting FBI checks on applicants.

Effective January 1, 1999, based on changes to state law, the department expanded its criminal history checks of all new child care facility owners, operators, employees, and adult residents to include a review of FBI records. By including these records in the criminal history checks, the department would become aware of any crimes an individual committed outside California. The law states that individuals who declare they have not been convicted of crimes can start operating, working in, or residing in a child care facility while the department conducts the FBI check. We interpreted this to mean that the department cannot authorize any individual who discloses criminal convictions to begin caring for children until an FBI check is complete. However, the department interprets the law to authorize it to allow people who disclose criminal convictions to begin caring for children before going through the mandatory FBI check. Although the department's view of the statute must be considered, we think that our interpretation does the most to further the legislative goal of protecting children. The department licensed or allowed 9 of 11 individuals we reviewed who had background checks in 1999 to own, operate, work in, or live in child care facilities without FBI checks even though they disclosed criminal convictions. The department's actions could leave children in the hands of individuals whose criminal histories make them unfit to supervise children.

The department interprets state law to allow individuals who disclose criminal convictions to operate, work in, or reside in a child care facility while their FBI records are checked. This interpretation does not fully protect children.

State law contains certain provisions that, if met, allow a person to open a new child care facility or work in an existing facility pending the department's review of the individual's FBI information. Specifically, the person must meet all other licensing requirements and submit a signed statement that he or she has never been convicted of a crime in the United States, other than minor traffic violations. Further, we think that the law can be read to require that, if a person discloses criminal convictions, he or she cannot obtain a license or work in a child care facility until the department reviews the individual's FBI information.

For 11 cases we reviewed, the department allowed 9 people to care for or be in close proximity to children pending an FBI check, even though they disclosed criminal convictions.

We reviewed the records of 11 individuals who had criminal history checks in 1999 and identified 9 that the department licensed or allowed to work or live in a child care facility pending FBI checks even though the individuals had disclosed criminal convictions. Based on our reading of state law, the department should not have issued these people licenses until the FBI checks were complete. Because the department did not complete the FBI check requirements, it did not know if it had exposed children to individuals who, based on their criminal history, were not appropriate to care for them.

After we brought these findings to the department's attention, its chief of central operations reviewed the department's field instructions for licensing applicants pending FBI checks and concluded that the instructions to staff were not explicit enough. Subsequently, the department's deputy director for the Community Care Licensing Division stated that the department does not believe the Legislature intended to delay licensure or employment pending an individual's FBI check. Additionally, the department contended that the FBI checks are costly and time consuming and, although designed as an additional safeguard, have not proven more accurate or up-to-date than information Justice provides through its records review. Nevertheless, we believe that children are best protected when the department conducts FBI checks on individuals before they come in contact with children.

We also have concerns about how the department handles FBI checks when potential owners, operators, employees, or adult residents of child care facilities are not truthful regarding their criminal histories. State law and the department's licensing requirements do not specifically address how the department should deal with individuals who do not disclose criminal convictions but whose criminal history checks from Justice reveal they were lying. For example, in November 1999, a new employee of a child care facility submitted a written statement that he had never been convicted of a crime. However, the department had already received information from Justice that the employee had criminal convictions. Nevertheless, although the man's FBI check was still pending, the department allowed him to work in the facility beginning in December 1999. We believe that the department should be more circumspect with individuals who state information that conflicts with Justice records and should not allow such persons to work or reside in child care facilities until it reviews FBI records.

Finally, the department was lax in applying FBI criminal check requirements prior to the 1999 law requiring an FBI check for all individuals. In 1998, the department's procedures required a review of a person's FBI records only if there was reason to believe he or she had recently lived in or committed crimes in other states. We reviewed 13 cases from 1998 and found that 5 required FBI checks but the department failed to obtain them. For example, in June 1998, the department received a rap sheet from Justice that included a unique FBI identification number—an indication that a person might have criminal convictions in other states. However, in August 1998, the department allowed the individual to work in a child care center without requesting FBI records. The department claims that a unique FBI identification number does not necessarily indicate a criminal conviction in another state but rather a California conviction that was reported to the FBI. Because FBI records would duplicate Justice's criminal history information in such instances, the department believes that these cases do not warrant FBI checks. However, the department cannot know whether the information is redundant until it requests and receives it. More importantly, by not following procedures established to identify individuals with criminal histories that span beyond California, the department may have exposed children to persons who threaten their safety.

JUSTICE'S PROCESS FOR REPORTING SUBSEQUENT CRIMINAL ACTIVITY IS FLAWED

Justice has not consistently notified the department of crimes individuals commit after the department completes its initial criminal history check.

Although state law requires Justice to notify the department if a previously approved owner, operator, employee, or adult resident of a child care facility is convicted of a crime or arrested for certain statutorily defined crimes, Justice did not do so on a consistent basis. Some individuals, with and without criminal histories, commit crimes after the department grants them child care facility licenses or approves them to work or reside in child care facilities. Justice uses a process of electronic flags; whenever it does a criminal history check, it leaves a notation in its computer system, and whenever it enters a new arrest or conviction, the system checks for that notation. If a new arrest or conviction is entered for a child care facility owner, operator, employee, or adult resident, Justice manually assesses the available information and determines whether, under state law, it can release the information to the department. However, Justice did not notify the department for four of nine such cases we reviewed.

Justice did not notify the department about a child care facility employee who was arrested and convicted of felony drug possession.

As mentioned previously, the department granted a criminal history exemption to a woman who was apparently addicted to crack cocaine. Five months later, the woman was arrested and convicted of felony drug possession. However, until we brought this matter to its attention, Justice had not notified the department as required. Thus, the department was unaware of this woman's crime for more than a year following her arrest and conviction. The woman quit her job at the child care facility nine months after the arrest and conviction, but it was not because the department took action to bar her from the facility. Because Justice's system for notifying the department of the individual's subsequent criminal activity did not work, the department did not have the information necessary to assess the risk this individual posed to children. In another case, the department granted an exemption for a robbery conviction to the spouse of a child care home licensee, primarily because the spouse had not had any further arrests for nine years and the department's staff believed the spouse was reformed. However, after the department granted an exemption, the spouse was convicted of embezzlement. Justice did not notify the department of the new conviction. Thus, the department was not able to reconsider its decision in light of the spouse's new crime.

According to the manager of Justice's Applicant Response Section, these exceptions were the result of human error, because analysts did not forward the new arrest and conviction information through the proper internal systems. Justice has no method to track the new arrest and conviction information after it is printed out from the database and manually reviewed; therefore, Justice cannot detect and correct those instances where analysts did not follow the procedures it has established for reporting subsequent criminal activity to the department. As a result, children may not be safe because the department cannot monitor individuals who continue criminal activity after their criminal histories are initially reviewed and cleared.

PARENTS SHOULD BE INFORMED OF CRIMINAL HISTORY EXEMPTIONS

Parents seeking child care in a licensed facility have no way to know whether an owner, operator, employee, or adult resident of a child care facility has a criminal history. There is no law requiring the department or an individual to disclose a criminal history exemption to parents. Moreover, state law prohibits the department from disclosing the specific contents of an

individual's rap sheet. Because of the limitations set by law on the release of criminal history information, the department believes that informing parents about individuals' criminal history exemptions might expose it and licensees to legal liability. Therefore, not only are parents denied knowledge of what crimes child care facility owners, operators, employees, and adult residents have committed in the past, they are also unaware that the department has granted these individuals exemptions for those crimes.

Although it may not be necessary to reveal the specific nature of the crimes, it is important to inform parents that the department has granted an exemption to someone who comes in contact with their children at a child care facility. The fact that the department has assessed an individual's criminal history and granted an exemption does not necessarily mean the person is rehabilitated. If parents are made aware of the exemption, they can look for signs of problems. Further, in child care homes, there is often no one to observe how the children are treated, making it still more important for parents to know if the owner, operator, employees, or adult residents of a child care facility have histories of criminal behavior. Finally, although the passage of time may reduce a person's likelihood of engaging in more criminal activity, children's safety is ultimately the responsibility of their parents. Therefore, to protect and care for their children, parents deserve the right to decide if they want to expose their children to persons with criminal histories. Disclosing to parents that an individual requires an exemption because they have a history of criminal convictions could give parents valuable information to assist them in making such important decisions.

State law prohibits the department from disclosing criminal records, not exemption decisions. The department therefore acknowledges it could disclose to the public its exemption decisions and to whom exemptions were granted. However, it has never directed licensees to do so because the department believes that it may expose both itself and licensees to legal liability. It contends that telling a third party that a person has a criminal exemption implies that the person has a criminal record. The Legislature has already recognized that in certain situations, parents should be notified when individuals convicted of certain crimes are supervising and disciplining children. Under state law, a number of organizations, such as the Boy Scouts, must notify parents when persons convicted of crimes, including those for which the department may grant exemptions, are caring for children. However, the department

Although state law prohibits the department from disclosing criminal records to parents, it could disclose exemption decisions and to whom exemptions were granted.

has determined that this law does not apply to it, and thus, the department will not require disclosure of criminal exemptions unless legislation is passed. Therefore, until the department ensures that disclosures are made, parents will not receive critical information they need to make informed child care choices.

RECOMMENDATIONS

To further protect children in licensed child care facilities, the Legislature should:

- Assess the department's level of discretion to exempt individuals with criminal histories and determine whether that level is appropriate.

- Consider pursuing laws that automatically deny an exemption on a greater range of crimes to make criminal history standards for child care facility owners, operators, employees, or adult residents comparable to those used for public school teachers. Also, the Legislature should consider expanding the variety of serious arrests the department may review.

- Clarify the existing requirements to specify whether an individual can have contact with children pending an FBI check. In addition, the Legislature should consider modifying the FBI check requirements to address situations when persons requiring FBI checks do not truthfully disclose crimes when requesting criminal history exemptions.

To ensure that criminal history exemptions are not granted to individuals that may pose a threat to the health and safety of children, the department should:

- Follow its new procedures that require management to review all criminal exemptions involving felonies. Additionally, the department should require management to periodically review and approve a representative sample of all other exemptions granted.

- Exercise caution when granting exemptions and actively consider all available information, not just rap sheets. When considering the additional information, the department should perform any needed follow-up while it determines whether to grant someone an exemption. To the extent that

the department believes it needs statutory changes to appropriately carry out its responsibilities, the department should seek such changes.

To process criminal history checks as quickly as possible, the department should:

- Establish a goal within which it must notify individuals that they must request a criminal history exemption and work to make certain that all such notices are sent within the prescribed time frame.

- Develop safeguards to help ensure that municipal agencies provide requested information promptly so that the department meets its goal of granting or denying exemptions within 45 days.

- Use its tracking system to identify cases that are not receiving sufficient attention from staff or where those seeking criminal history exemptions are not providing information promptly, and take action to close or expedite those cases.

To implement the FBI record-checking requirement in accordance with the law, the department should:

- Reevaluate its current policies and procedures for reviewing all individuals' FBI records.

- Properly apply the requirements that allow individuals to work with or be in close proximity to children while their FBI check is pending.

To allow parents to make informed decisions about child care, the department, working with the Legislature, should require disclosure of criminal history exemptions. Further, the department, working with the Legislature, should determine the types of criminal histories and lengths of time this requirement should apply to, such as disclosing for five years an exemption received for certain convictions and serious arrests.

To provide the department with the most complete information possible on which to base its exemption decisions, Justice should continue working to help ensure that all criminal history information is forwarded from municipal agencies to Justice in a timely manner.

To ensure that the department receives information on subsequent criminal activities of individuals who have been approved to own, operate, work in, or reside in child care facilities, Justice should establish a system to track notices sent to the department about additional crimes committed by a previously approved individual. ■

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CHAPTER 2

Weaknesses Exist in the Department's Monitoring Processes

CHAPTER SUMMARY

The Department of Social Services (department), through its district offices, investigates complaints against child care facility owners, operators, employees, or adult residents and periodically evaluates child care facilities for compliance with licensing laws and regulations. However, the department does not always follow up on complaint investigations to ensure that all deficiencies are corrected. Nor does the department perform all facility evaluations within the required time frame. We also identified several evaluations the department simply failed to perform at all. Furthermore, the department's district offices do not effectively supervise licensing program analysts (analysts), and regional offices do not adequately oversee the operations of contracted counties and the district offices. As a result, the department cannot ensure that the child care facility licensing program is administered as required and that children are receiving proper care.

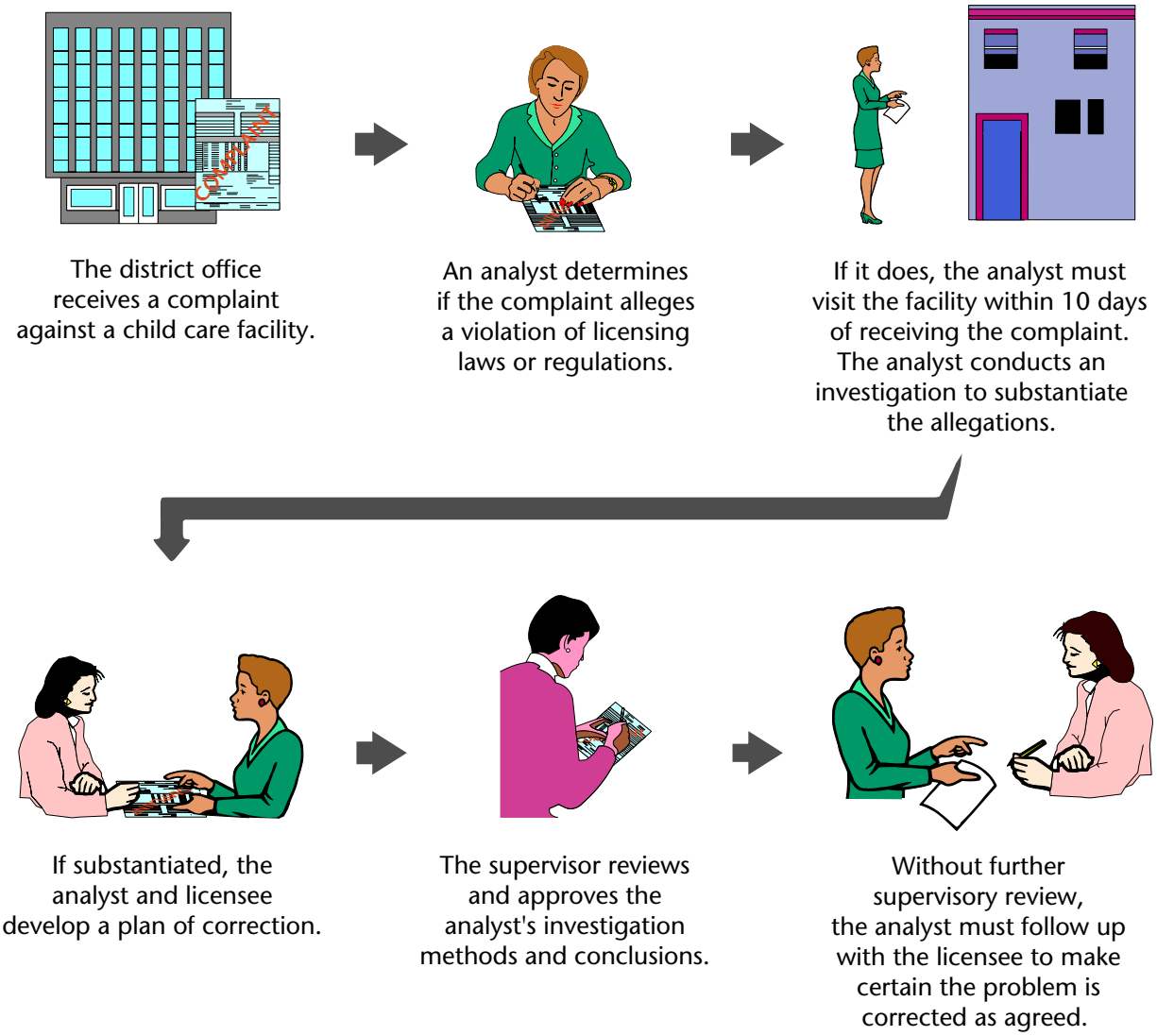
THE DEPARTMENT HAS BEEN LAX IN ENSURING THAT SUBSTANTIATED COMPLAINTS AGAINST CHILD CARE FACILITIES ARE CORRECTED

Although the department appears to effectively investigate complaints it receives regarding child care facilities, it does not consistently pursue substantiated complaints to ensure that problems are corrected. Because the department does not always perform the necessary follow-up procedures on substantiated complaints, it cannot guarantee that child care facility license holders (licensees) are in compliance with the laws and regulations and are providing safe and healthy environments for children. An additional concern is the appropriateness of the department's current 30-day time frame for completing the follow-up segment of an investigation of allegations of sexual or physical abuse.

By law, parents who have their children in a licensed child care facility can complain to the department when they have concerns about the facility. The department, with few exceptions, must investigate all complaints it receives and make certain that substantiated complaints are corrected. Figure 2 shows the department's complaint process.

FIGURE 2

The Department's Complaint Process



In reviewing 14 substantiated complaints that required follow-up, we found that in almost 40 percent of the cases, the department could not demonstrate that the problem at the facility was corrected. For example, in October 1998, the department substantiated a complaint against a child care home that employed individuals with no lifesaving or first-aid training. However, after developing corrective actions with the licensee, the analyst failed to determine whether the individuals ever attended the classes.

In another case, the department received a complaint that electrical outlets in a licensed child care facility were uncovered. The analyst substantiated the complaint in March 1998, and the supervisor reviewed and approved the complaint. In our review, we found that the analyst failed to follow up to determine if the licensee covered the electrical outlets, and we brought this finding to the department's attention. The district office informed us that on June 6, 2000, more than two years after substantiating this complaint, an analyst visited this child care home and confirmed that all the necessary electrical outlets were covered. Because the department did not visit the facility until we questioned its lack of follow-up, and because the time frame was unusually long, we do not consider the department's actions representative of appropriate and necessary complaint follow-up.

Although supervisors review complaint investigations, the department's current process does not require the supervisor to confirm that the complaint was corrected.

According to the department, supervisors review each complaint to determine if the analyst has conducted a thorough investigation, arrived at the correct conclusion, and developed an appropriate plan of correction. Further, the department states that the supervisors' approval of a complaint is meant to ensure that all proper steps have been taken to resolve the complaint and protect the health and safety of children. Despite the department's intent, its current review requirements leave the supervisors out of the final, critical stage of the complaint process: making certain the complaint is corrected. If the complaint ultimately is not corrected, the effort to investigate and substantiate it is wasted.

When the department receives complaints that allege serious physical or sexual abuse, it must hand them over to the Regional Investigation Section (RIS), which has staff specially trained to investigate abuse cases. Once the RIS completes its investigation and sends its findings to the department, district office staff are responsible for any necessary follow-ups and corrective actions. According to the department's policies and procedures, the

district office must take action on a substantiated complaint, such as visit the facility, within 30 days. Considering the severity of these complaints, we question whether the department's 30-day time frame offers enough protection to children in care.

We question whether the department's 30-day time frame for taking action on substantiated complaints of sexual or physical abuse offers enough protection to children in care.

In 1999, the Coastal Regional Office (coastal region) RIS investigated and substantiated a complaint that a licensee had physically abused an infant by holding her hand over the infant's mouth and telling the infant to "shut up." The RIS completed its work in November 1999 and that month forwarded its report to the responsible district office. In early December 1999, a little more than 30 days after receiving the report from the RIS, the district office analyst discussed the outcome of the investigation with the licensee. Based on our review of the case information, because the analyst visited and discussed the investigative report with the licensee at roughly the end of the 30-day period, the department appeared to comply with its own guidelines.

Nonetheless, we question whether this 30-day deadline makes sense, especially considering that the RIS has already substantiated this type of complaint by the time the district office receives the RIS' report. Moreover, when we discussed the 30-day deadline with the department, two district managers informed us there were no written guidelines governing when a district office should provide a licensee with RIS investigation results; however, written guidelines do exist. This apparent lack of awareness increases our concern that district offices may not be issuing and subsequently resolving RIS findings as quickly as needed. Because the complaints that the RIS investigates involve serious issues, it is critically important for the department to resolve the problems quickly and guard children against further risk of maltreatment.

THE DEPARTMENT DOES NOT ALWAYS PERFORM FACILITY EVALUATIONS AS REQUIRED

The department does not always meet its requirement to evaluate each child care center annually and each child care home every three years. Frequently, facilities are inspected long past the deadline, and sometimes not at all. Moreover, the department may not be satisfying the requirement that it must annually evaluate a specified percentage of child care homes. Because the department has failed to visit some facilities as required and has

not visited others in a timely manner, it cannot ensure that the child care facilities it licenses are operating in accordance with licensing regulations and providing healthy and safe environments for children.

A required evaluation consists of an unannounced visit by a district office analyst who assesses the facility's physical condition, reviews facility records, and interviews staff and children. The department tracks which facilities are due for evaluation using a centralized, automated database called the licensing information system (system) and each month notifies the analysts which facilities in their caseloads are due for evaluations within the next 150 days. After conducting a facility evaluation, the analyst enters the visit into the system, and the visit falls off the due list.

We reviewed 91 evaluations (of 46 child care centers and 45 child care homes) that were due in 1998 and 1999. The department performed 21 of the 91 facility evaluations from 5 days to more than two years past the due date. Over half of the 21 facility evaluations were more than 30 days late, and 6 of the 21 were more than seven months late. The department's failure to evaluate these facilities promptly has a more significant effect on child care homes because they are on a three-year evaluation cycle, and missed or late evaluations increase the potential for deficiencies to persist. The department contends that, when analysts have heavy workloads involving other priorities, it may be appropriate for them to delay completing these facility evaluations. However, evaluations that are significantly late prohibit the department from ensuring that licensees are operating properly and caring for the children entrusted to them.

Of 91 evaluations reviewed, the department failed to perform 21 of them on time—6 of the 21 were performed more than seven months late.

Our review of 91 facility evaluations also found that the department failed to complete 4 facility evaluations during 1998 and 1999: 1 for a child care center and 3 for child care homes, all located within the same district. Regarding the child care center and one child care home, the district overlooked the necessary evaluations entirely. For the remaining two child care homes, an analyst attempted to conduct evaluations but was unable to make contact with the licensees. The supervisor directed the analyst to complete the evaluations at a later date but to enter the evaluations in the system as complete; however, the analyst failed to follow through with the evaluations.

By allowing analysts to enter incomplete visits into the system, the department increases its chances of over-looking facility evaluations entirely.

Although it appears that the licensees in the two child care homes that the department attempted to visit may have stopped operating sometime before the department took the formal steps to close them, it was only after we questioned the district manager about these facilities that the supervisor formally canceled the license of one child care home in April 2000. The facility had been licensed and may have operated without an evaluation for more than five years. The second child care home, whose license was canceled in late May 2000, may have operated for more than four years without a facility evaluation. The district manager stated that he was not aware of these specific situations and disagrees with the decision to enter the incomplete visits into the computer as complete, although he understands why his staff took these steps. According to the department, its current system has no mechanism to reflect attempted evaluations, and it recognizes that some district offices code attempted evaluations as complete. By allowing analysts to enter incomplete visits into the system, the department increases its chances of overlooking facility evaluations entirely.

The Department's Approach to Performing Additional Evaluations Required by Law Is Questionable

During fiscal year 1998-99, state law required the department to conduct annual evaluations of 10 percent of all child care homes. These evaluations were required in addition to the other types of evaluations the department had to make on a regular basis. According to the department, to satisfy the 10 percent requirement, it counted a variety of evaluations, including complaint investigations and triennial visits; however, it appears this method of counting was flawed. Effective July 1999, the department received additional funding to increase the percentage to 20. This increase makes it even more critical that the department track its evaluation visits correctly.

Based on state law in place during fiscal year 1998-99, the department was required to evaluate 10 percent of all child care homes *in addition to* other types of evaluations the department made, such as complaint and triennial evaluations. Furthermore, the law specified that child care homes were to be counted, not the visits made to the homes. The 10 percent requirement appears to have been an attempt to make the department contact and evaluate a number of child care homes in addition to its day-to-day duties. However, the department inappropriately included complaint investigations in its count. Because

complaint visits are required by law and are a significant part of the department's normal operations, by counting these visits as part of the 10 percent requirement, the department was not fulfilling the law's apparent intent of increasing the department's contact with child care homes. Further, because the department was counting visits it made rather than homes, the department may have been counting a home more than once, thereby distorting the number of child care homes counted toward fulfilling the 10 percent requirement.

The department could not confirm that it met a statutory requirement to visit an additional 10 percent of all child care homes in fiscal year 1998-99.

The department stated that it is unclear whether it complied with the intent of the law during fiscal year 1998-99 and claims that the 10 percent requirement was not funded. The department also stated that the law was ambiguous when it stated that the 10 percent requirement could be fulfilled by visits made "at any time, including the time of a request for a renewal of a license." Further, the department agreed that, for the purposes of the 10 percent requirement, each child care home should be counted only once and contends that it is "highly likely that the large majority of visits conducted were to separate homes." However, it concedes that it is constrained by the limitations of its own data-tracking system.

The department must now annually evaluate 20 percent of all child care homes. Although the law containing the 20 percent requirement took effect in July 1999, the department only began tracking the requirement through its automated system at the end of March 2000. According to the department, during staff training held in January and February 2000, it directed analysts in each district office to manually track visits for this requirement. It did not direct staff to apply these procedures retroactively to July 1999 when the 20 percent visit requirement took effect. Because the department began tracking this requirement so recently, it could not confirm if it was on target to meet the requirement for fiscal year 1999-2000.

Moreover, to meet its 20 percent objective, the department is targeting child care homes that have had serious substantiated complaints or violations during the past 12 months. Although, unlike the previous year, the department is now allowed to count complaint visits toward satisfying the 20 percent requirement, the department still runs the risk of double-counting child care homes by counting types of visits made rather than tracking the actual child care home visited.

THE DISTRICT OFFICES DO NOT PROVIDE SUFFICIENT STAFF OVERSIGHT

Department supervisors are not periodically reviewing most aspects of analysts' work. Consequently, the department has little assurance that analysts are effectively administering the child care facility licensing program. According to supervisors from two district offices, new analysts' activities are monitored for the first three to six months on the job by accompanying the analysts on site evaluations and by regularly reviewing the analysts' evaluation reports. However, the supervisors admit that supervisory reviews decrease after this period.

Department supervisors do not review most aspects of analysts' work, leaving the department with little assurance that the child care facility licensing program is administered effectively.

At the district level, analysts issue child care facility licenses and ensure that individuals abide by licensing regulations through complaint investigations and facility evaluations. Each analyst reports to a supervisor. Based on an analyst's significant degree of ongoing responsibility for children's welfare, we expected to find a systematic process in place for supervisors to ensure that analysts make sound decisions and appropriately enforce licensing regulations. For example, we anticipated that supervisors would periodically review facility evaluations and licensing decisions and ride along on facility visits. However, as district office staff informed us, this level of supervision generally does not continue beyond the analysts' first three to six months, after which time the supervisors limit their reviews to activities such as complaint investigations.

In an effort to improve the quality and consistency of the analysts' work, the department established its quality enhancement process (QEP), but we found that districts are not using this tool consistently. The QEP is a means for supervisors to assess analysts' work and give them feedback. Every year, each supervisor is supposed to review 4 of 17 identified analyst functions, such as proper processing of licensing applications and thorough investigation of complaints against child care facilities. However, we found that only one of the three districts we reviewed had consistently used the QEP. The other two district managers admitted their supervisory staff performed reviews only occasionally, as time allowed. Also, a supervisor at one of the districts stated that QEP reviews tend to be partially completed or overlooked entirely because they are given a lower priority among other supervisory duties. In addition, because supervisors are required to review only 4 out of the 17 functions every 12 months, they may be reviewing some critical elements just once every four years.

In response to our inquiries regarding supervisory oversight of an analyst's work, the department cited examples of how they use different reports to keep track of the analysts' caseloads, how supervisors become involved in unique situations, and how the QEP helps ensure that supervisors periodically review analysts' functions. Although caseload management helps to properly track work, it does not guarantee high-quality work. In addition, even though supervisors are reviewing certain unique aspects of an analyst's work, this may be occurring too infrequently to identify problematic areas. Furthermore, as we describe above, some supervisors are not consistently performing QEP reviews, if at all. Therefore, the department has no effective way to monitor and ensure the quality of its analysts' work.

THE NORTHERN REGIONAL OFFICE IS NOT CONSISTENTLY MONITORING COUNTY LICENSING FUNCTIONS

Although the department has a process for monitoring the contracted counties, it reviews their performance infrequently.

Despite a process initiated in 1990 for monitoring the licensing activities of counties contracting with the department, the Northern Regional Office (northern region) reviews the counties' performance infrequently. The department contracts with 10 counties, allowing them to license and monitor child care homes. Of these counties, 9 are under the direct supervision of the northern region, and the 10th county is in the coastal region. Although the department is responsible for the counties' licensing activities, it does not consistently monitor these activities, even after having developed an assessment tool to do so. As a result, the department cannot make certain that the counties are licensing and monitoring child care homes appropriately and that the children in those homes receive adequate care.

The 10 counties that perform their own licensing activities are Del Norte, Fresno, Inyo, Marin, Mendocino, Sacramento, Santa Cruz, Sutter, Tehama, and Yolo. Together, these counties license and monitor approximately 5,300 child care homes. We focused our review on the northern region, which oversees all the contracted counties except Santa Cruz. As outlined in its agreements with the counties, the department is responsible for inspecting, reviewing, and monitoring each county's activities as they pertain to licensing child care homes. In 1990, the department delegated this responsibility to the regional offices but failed to provide them with guidelines. In that same year, the northern region developed its own monitoring methods, including a county review process, to fill the void. The county

review process consists of visiting each county's licensing office and assessing activities such as processing license applications, conducting criminal history checks, and investigating complaints. Although the county review process appears complete, the northern region has failed to use it consistently.

Over an 8-year period from 1991 to 1999, the northern region reviewed only three of nine county licensing programs under its direct supervision.

For example, although with added staff the northern region reviewed seven of the nine counties under its direct supervision in 1999, it reviewed only three counties over the previous 8-year period. In addition, the northern region identified numerous deficiencies during its 1995 review of the second largest county licensing program, but the region did not formally review that county again until 4 years later.

The deputy director of the Community Care Licensing Division acknowledged that "county reviews should be accomplished according to a predetermined schedule." However, the manager of the Out-of-State Certification Unit, which supervises the county-monitoring function, told us that the northern region has relied on informal monitoring techniques, such as telephone contacts and periodic legal consultations, to assess the counties' licensing operations. These informal methods may be effective ways to identify and resolve specific problems, but they do not provide a complete and accurate representation of a county's licensing program. Moreover, because the department lacks a schedule for periodically and consistently monitoring the counties' licensing programs, it cannot ensure that county programs are operating effectively and may be allowing deficiencies within these programs to persist.

REGIONAL OFFICES LACK EFFECTIVE OVERSIGHT OF DISTRICT OFFICE OPERATIONS

The department's regional offices are also responsible for monitoring district offices. Considering the reporting relationship between the district and regional offices, we expected to find a structured method for the regional offices to periodically evaluate the districts' operations. Yet the department has failed to establish policies and procedures or standards to direct its regional offices in their oversight role. Consequently, the regional offices do not effectively or consistently monitor the district offices' licensing activities, and the department cannot ensure that its licensing activities are conducted in accordance with state laws and regulations.

Although it designed a review document for regional offices to review district office operations, the department did not mandate its use.

To administer licensing activities throughout the State, the department divided the responsibilities into four separate regions, which were further divided into 13 districts. To assist the regional offices in assessing the district offices' efficiency and effectiveness, the department designed a review document. However, rather than mandating its use, the department allows each regional office to use the review document at its own discretion. The Los Angeles Regional Office used the review document in 1998 and part of 1999, but the northern and coastal regions did not formally review their district offices, claiming they lacked the staff to do so. Further, the manager of the coastal region stated that she stopped using the review document in approximately 1992 because the department no longer required it.

The department stated that to monitor its district offices, the regional offices receive work volume reports to track the number of licenses and complaints, the amount of work pending and overdue, and the status of legal actions and personnel training. These reports appear to identify the goals and accomplishments of the district offices, but it is unclear how the regional offices use them for monitoring. For example, the complaints database tells the regional offices how many complaints the district offices receive and investigate but fails to indicate if the district offices are responding to and resolving complaints in accordance with licensing policy and procedures. As a result, information that the district offices provide is limited in assisting the regional offices in their oversight.

RECOMMENDATIONS

To ensure that child care facilities are operating in compliance with state laws and regulations, the department should:

- Review and modify its complaints processing procedures so that all necessary complaint follow-ups occur.
- Revise its policies and procedures to require the district office to cite licensees within 10 days following an RIS investigation.
- Conduct facility evaluations as required within the timelines established for both child care centers and child care homes.
- Track and monitor evaluations that are not performed on time until the evaluations are conducted.

- Establish policies and procedures to ensure that district offices only count facility evaluations that they actually conduct.

- Identify and track the evaluations of child care homes needed to meet the 20 percent requirement set by state law.

To determine that district offices are properly supervising analysts' work, the department should:

- Establish standards requiring district offices to periodically review evaluation reports prepared by their staff.

- Make certain that each district office is scheduling and performing its QEP evaluations as required. Further, consider modifying this program to make key functions, such as facility evaluations and complaint investigations and follow-ups, mandatory parts of each evaluation.

To ensure that district and county offices authorized to license child care facilities are operating effectively and are properly licensing and monitoring facilities, the department should:

- Develop and maintain a schedule to periodically review each county's child care facility licensing operations.

- Establish policies and procedures to ensure that regional offices periodically and consistently assess district offices' operations. ■

CHAPTER 3

The Department Should Expedite Legal Actions and Better Enforce Disciplinary Decisions

CHAPTER SUMMARY

Although the Department of Social Services (department) appears to have been diligent in taking legal action against individuals who fail to comply with licensing laws and regulations, the department should consider setting a shorter time frame for filing pleadings than the current six-month goal. Further, enforcement of decisions and orders (decisions) is not always timely, consistent, or thorough.

When necessary, the department can take legal action to revoke a child care facility license or bar individuals from working or residing in a facility. Legal action helps ensure that anyone who will not or cannot comply with licensing laws and regulations does not care for or come in contact with children in child care facilities. We reviewed 19 cases in which the department took legal action and successfully negotiated settlements. The majority of cases resulted in the department placing a child care facility license holder (licensee) on probation rather than revoking the license; however, the settlement decisions appeared reasonable. With the help of a settlement committee that reviews and approves most settlement proposals, the department sets strict probationary terms that require licensees on probation to correct deficiencies through additional training or mandatory facility repairs. Further, the department's legal division has reduced delays in filing pleadings since April 1998, when it established an internal goal to initiate legal action on all cases within six months of receiving the case. However, considering that the district office has already determined that legal action is necessary, this six-month time frame still may not be reasonable. Finally, although district offices are responsible for enforcing legal decisions, the department has not given the district offices clear policy to follow, thereby limiting the effectiveness of their enforcement efforts.

THE DEPARTMENT IS GENERALLY AGGRESSIVE IN THE LEGAL ACTIONS IT SEEKS

The department can take formal legal disciplinary action against a child care facility licensee, employee, or adult resident who repeatedly fails to comply with or commits a serious violation of licensing laws or regulations. Although the legal issues can be heard and decided by an administrative law judge (judge), the department usually follows the option of negotiating a binding settlement. Based on our review of 19 settlements, the department generally sought and secured the appropriate disciplinary measures, ranging from revoking a license to closely monitoring a facility for compliance with laws and regulations by increasing facility visits and requiring training and facility repairs. Although most settlements we reviewed resulted in licensees' probation, these decisions seem sound. To help ensure that probation is a beneficial way to resolve a case, the department imposes strict terms and uses a settlement committee—three attorneys not directly involved in the case—to assess the department's negotiations.

The settlement committee is composed of three assistant chief counsels from the department's legal division. It contributes to settlement decisions by reviewing and discussing the following with the department attorney assigned to the case:

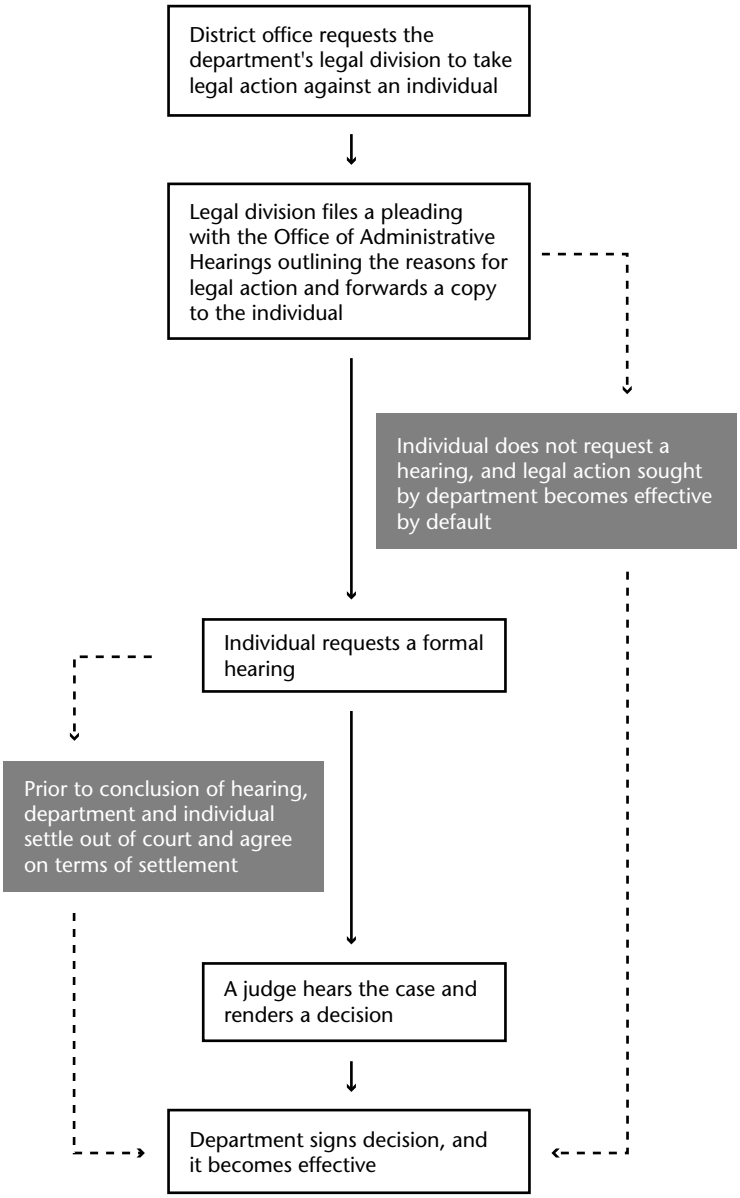
- The nature of the violations.
- The evidence available to support the department's legal actions.
- The district and regional managers' views of the case.
- If the case is heard by a judge, the likelihood the judge will decide on probation.
- The proposed settlement terms.

The department has a progressive system of disciplinary procedures that begins at the district office level. The district office generally holds a conference with a child care facility licensee, employee, or adult resident who has failed to comply with laws or regulations. However, if the district office is unable to achieve compliance, it refers the case to the department's legal division. The department's options are to revoke the child care facility license, physically bar or exclude an employee or adult resident from a facility, or place the licensee on probation.

As Figure 3 illustrates, the department's legal action process is initiated by a district office and may involve either a judge deciding the case or the department and licensee negotiating a settlement.

FIGURE 3

The Department's Legal Action Process



We focused our review on settlement outcomes because the department has more control over this process. We reviewed 19 legal cases in which the department negotiated a settlement: 7 of these cases resulted in a revocation or exclusion action, and 12 resulted in probation.

After reviewing the 12 probation cases, we found that the terms were often strict and effectively addressed the issues. For example, in one probation case, the department alleged that the licensee did not properly supervise the children and employed unqualified staff. In its probation settlement, the department required the licensee to employ a qualified consultant to assist in administering the facility and submit three written facility compliance evaluations during the three-year probation period. The department also reserved the right to contact the consultant directly during the probation period. All these requirements appeared reasonable to ensure that the licensee complied with all licensing laws and regulations.

THE DEPARTMENT SHOULD TAKE FURTHER STEPS TO PROCESS LEGAL ACTIONS MORE QUICKLY

The department has reduced the time it takes to file cases against licensees who do not comply with laws and regulations, but the department should consider setting an even shorter time frame. Although its current 6-month goal is an improvement over the previous one of 12 months, the department should consider further reductions to ensure that children are not exposed to dangerous situations.

Since April 1998, the department has reduced the time it takes to file legal cases, but the department should do more.

Once the department's legal division receives a request for legal action, its first step is to file a pleading with the Office of Administrative Hearings outlining the department's reasons for taking action against an individual. In April 1998, in an attempt to minimize delays in filing pleadings, the legal division set a goal of six months for filing pleadings for all cases received. Prior to setting this goal, the department attempted to file all case pleadings within one year of receiving the request.

In our review of 45 cases, 12 before the April 1998 goal and 33 after, we found that the department has made progress in reducing the time it takes to file cases. Specifically, for 4 of 12 cases handled before April 1998, the department took four months or less to file pleadings; for 5 of the remaining 8 cases, the department took between six months and nearly two years to file pleadings. In 4 of these cases, the department allowed the licensees to continue operating their facilities. In contrast, of 33 cases we reviewed that were filed after April 1998, the department took less than four months to file pleadings in 27 cases, and only 3 cases took more than six months, the longest of which

took nearly eight months. According to department attorneys assigned to these 3 cases, each took more than six months because of the need for further investigation or information.

Despite these improvements, we question whether the department's six-month goal for filing cases is short enough. For example, 1 of the 33 cases we reviewed that was received after the department set the six-month goal involved a licensee who repeatedly failed to provide adequate supervision to children, sometimes putting them at risk for injury, and had more children in the facility than her license allowed. Although the department ultimately determined her facility was unsafe, it allowed the licensee to continue to care for children while taking more than four months to file the pleading.

When the department concludes it must take disciplinary action against a licensee who is not appropriately caring for children, a six-month goal for taking action seems imprudent.

According to the deputy director for the legal division, the department set its goal at six months because, based on its workload, anything less was unrealistic. The deputy director also stated that the department attempts to expedite cases in which children are in imminent danger. We agree that the department should focus on the more serious cases first. However, when the department concludes it must take disciplinary action against a licensee who is not appropriately caring for children, a six-month goal for taking action seems imprudent, and possibly threatening to the safety of children left in the licensee's care.

THE DEPARTMENT'S ENFORCEMENT OF LEGAL ACTIONS IS WEAK

Although the department has shown improvement in processing legal actions, it does not always consistently and diligently enforce decisions regarding license revocation and individual exclusions. In addition, the department does not effectively ensure that all licensees placed on probation are complying with the settlement terms. These weaknesses are due primarily to the department's failure to provide adequate guidance to district offices, which are responsible for enforcing legal decisions. Although the department established new policies for enforcing revocations in April 2000, it still did not provide sufficient guidance. Additionally, it still has not developed guidelines for monitoring probation terms or enforcing exclusion actions. As a result, the department does not always make certain that serious and potentially dangerous conditions in child care facilities are remedied.

The Department Does Not Always Take Adequate Steps to Enforce Revocations

District offices, which are responsible for enforcing the department's license revocation decisions, do not always ensure that individuals whose licenses are revoked no longer operate child care facilities. The department's Evaluator Manual (manual) specifies that in the case of a license revocation, the district office "should visit the facility at least once after the decision is served to see if the former licensee has complied" with the decision. However, because the manual's language is permissive, the policy does not clearly define the circumstance under which a visit is required, nor does it establish a time frame for the visit. As a result, the department has not done everything it could to ensure that district offices are consistently and effectively enforcing license revocations.

The department has not clearly defined when or how the district offices should enforce license revocations.

Of 30 legal action cases we reviewed, 13 resulted in revocations of child care facility licenses. For 7 of the 13 cases, the department could not demonstrate appropriate follow-up. Specifically, in 1 case, the district office delayed its visit six months following the revocation decision. In 3 cases, the district offices claimed that staff made the required visits, but they could not demonstrate that they did so, and in 1 case the district office admitted to not making a visit at all. In 2 cases, the district offices relied on comments from food program personnel and statements by police officers. In 1 of these 2 cases, a disconnected telephone number was used as confirmation that the facility was no longer operating. Considering that in both cases the department did not force the licensees to cease operating while it processed the legal actions, relying on means other than personal visits seems unwise. Moreover, although police statements generally are reliable, the statements in this case stemmed from a police visit made six months before the decision was rendered. Additionally, statements made by food program personnel or a disconnected telephone number are at best inconclusive proof that the child care facility is no longer operating.

In April 2000, the department provided district offices with new procedures for enforcing license revocations. The procedures detail steps for notifying clients and local placement agencies that a child care facility is closing, and assisting clients in finding new child care arrangements. By requiring broad notification that a licensee is no longer qualified to operate a child care

facility, these procedures offer an improvement. However, the department still gives district offices no substantive guidelines to determine the circumstances under which they must visit a facility to ensure that it is not operating, nor does it set clear time frames for the visits. With issues such as relying on third parties and disconnected telephones still not addressed, the department cannot ensure that individuals abide by license revocation decisions.

The Department Lacks Adequate Policies to Enforce Exclusion Orders

The department also has not provided district offices with any guidelines on when and how to enforce exclusion orders, which bar individuals from child care facilities because of their misconduct. Because the department has not outlined when district offices should visit the facilities involved in exclusion orders and has not defined what types of evidence they should gather, the department cannot ensure that excluded persons are not associated with the facilities.

To determine if certain exclusion orders were carried out, the department relied on statements from employers or third parties rather than visits.

Of the 30 legal action cases we reviewed, we found 4 that resulted in exclusions of either employees or adult residents. In 2 of these 4 cases, the district offices relied on statements from employers or third parties rather than visits as evidence that the individuals were no longer associated with the facilities. In 1 case, the department excluded a husband of a licensee from a child care home, but the district office never made a visit to confirm that the husband no longer resided there. Instead, the district office relied on a statement from the husband's relative that the licensee had moved and was no longer operating the child care home. In addition, the district office determined that the home's telephone was disconnected. Based on this information, the district office concluded that the child care home was no longer operating and therefore a visit to the home was not necessary. Using telephone records and statements made by third parties, especially relatives of the excluded person, are not reliable methods to determine if a visit is necessary. It is possible that the licensee changed the number and stayed at the location, and that the excluded person continued to have access to the child care facility.

The Department Does Not Conduct Timely Visits in Probation Cases

The department has failed to provide the district offices with sufficient guidelines in another area: making timely and adequate visits to ensure that licensees on probation are complying with the settlement terms.

Of the 30 legal actions we reviewed, 13 resulted in the licensees' probation. In 4 of these 13 cases, the department either did not make timely visits to monitor compliance or the visits were not adequate. For example, the district office delayed visiting a licensee for as long as 23 months after the probation decision was made—just 1 month before the end of a 24-month probation period. Moreover, this visit occurred only after we brought the lapse to the department's attention. In another case, a visit nearly 8 months after the probation period began revealed that the licensee was not complying with the probation terms and resulted in additional legal actions. Delays such as this threaten the safety of children in child care facilities.

The department delayed visiting a licensee until just 1 month before the end of a 24-month probation period.

We expected district offices to have guidelines that addressed establishing plans for following up with licensees and monitoring the licensees' compliance with their probation agreements, but we found no such plans. According to the district office managers involved in the cases we reviewed, the probation settlements did not specify when and how many visits they should make. Without specific guidelines from the department, the district offices often make visits only as their daily work schedule allows.

We question whether it is appropriate for the district offices to wait for periods as long as we observed before making an enforcement visit to ensure that the licensee is complying with the terms of probation. It is crucial for the department to closely monitor these individuals, considering that the department initially took legal action against them for not complying with the laws or regulations.

Also the department does not always track if licensees are complying with the specific terms of their probation. In one case, a licensee failed to submit to the department written reports at 6 and 12 months, which appeared to be an important requirement of the probation. The district office also found that the licensee committed other violations of the settlement terms

during the first year of the probation but did not take legal action against the licensee for more than a year after it became aware of the violations. As a result, the licensee continued to operate the facility in violation of the probation terms for almost two years.

The district office stated that it did not immediately take additional actions against this licensee because the child care facility was critically needed in the area. Further, the district office believed it could ensure that the licensee complied with the regulations by providing additional technical support. Although we recognize that responsible and safe child care is at a premium everywhere, this need does not justify the department's decision to allow a chronically substandard facility to remain in business, especially after the licensee repeatedly demonstrated an inability to comply with licensing laws and regulations.

RECOMMENDATIONS

To ensure that it processes all legal cases promptly, the department should reassess its goal of filing a case pleading within six months of receiving the district offices' request for a legal action and strive to shorten it. Once it sets a more appropriate time goal for processing legal actions, the department should ensure that its processing goals for legal cases are met.

To allow the district offices to enforce all license revocations and facility exclusion decisions promptly, effectively, and consistently, the department should establish policies and procedures to guide district offices. The procedures should include time frames within which district offices must make two types of visits: one to make certain that individuals with revoked licenses are no longer caring for children, and another to ensure that individuals who have been barred from child care facilities have not been present. In addition, the department should clearly specify the circumstances when a visit is not necessary and the type of information the district may use as evidence that the individual is complying with the revocation or exclusion order.

Finally, the department should establish policies and procedures to guide district offices in creating formal plans to monitor licensees placed on probation as a result of legal actions. These plans should provide for prompt and consistent follow-ups

throughout the probation. In addition, the department should periodically review these plans to ensure that licensees on probation are not released from probationary status after only limited department monitoring.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

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for

MARY P. NOBLE
Acting State Auditor

Date: August 2, 2000

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APPENDIX A

A Review of Statistics Related to the Department's Licensing Process

The Joint Legislative Audit Committee (JLAC) requested the Bureau of State Audits to provide, as part of this audit, various statistical data related to the Department of Social Services' (department) child care facility licensing process. To address this request, we present information for the last three years on the number of applications for licensure the department received as well as information on the number of licenses that it issued or denied or that the applicant withdrew.

Additionally, we present statistics on the department's record of granting and denying criminal history exemptions. State law prohibits individuals with criminal histories from owning, operating, working in, or residing in child care facilities. However, state law also allows the department to grant exemptions from this requirement. Therefore, we also present information for the last three years on the number of individuals requesting exemptions as well as the number of times the department granted and denied exemption requests. State law mandates that the department cannot grant exemptions for individuals convicted of certain crimes such as murder and rape. Accordingly, we present the number of persons deemed ineligible for exemptions under state law. Finally, we present the number of individuals that the department reported as not having to request a criminal history exemption.

We were unable to present certain information that the JLAC requested. We could not present the number of licenses the department revoked due to criminal activity that individuals did not report before being licensed because the department does not capture this data. Also, the department does not maintain data in aggregate form on the number of individuals operating or working in child care facilities that were convicted felons when they requested criminal history exemptions. Similarly, it does not track data on the reasons for denials or revocations of licenses. Such information is only available in individual case files.

Finally, the information presented in this appendix reflects only those individuals who own, operate, work in, or live in child care facilities in the 48 counties for which the department performs licensing activities. The department, under statutory authority, contracts with 10 counties to license and monitor child care homes, and these counties independently maintain only limited licensing information.

CHILD CARE FACILITY LICENSING STATISTICS: LICENSE APPLICATIONS RECEIVED, APPROVED, DENIED, AND WITHDRAWN—1997, 1998, AND 1999

As shown in Table 2, the number of applications for child care home licenses that the department received during 1997, 1998, and 1999 increased each year. Of the applications received, the department approved close to 84 percent and denied less than 0.5 percent. Moreover, although the number of applications received and approved increased over the three-year period in all regions, the figures show that the southern region, which includes San Diego, San Bernardino, and Orange counties, received and approved the most child care home license applications. Finally, as shown in this table, potential licensees can withdraw their applications before the department issues their licenses. According to data the department provided, the total number of withdrawn applications for each calendar year primarily accounts for the differences between the total number of applications received, issued, and denied for child care homes. Because there are timing differences in the data within each region—the department could receive an application in one year and approve it in a subsequent year—these figures do not add up.

TABLE 2

Number of Applications for Child Care Home Licenses Received, Approved, Denied, and Withdrawn During 1997, 1998, and 1999

	Northern	Coastal	Southern	Los Angeles	Totals
1997					
Received	1,792	2,267	2,511	1,684	8,254
Approved	1,507	1,948	2,218	1,402	7,075
Denied	3	6	9	16	34
Withdrawn	213	185	309	210	917
1998					
Received	2,160	2,265	2,399	1,843	8,667
Approved	1,734	1,935	2,031	1,456	7,156
Denied	11	7	16	4	38
Withdrawn	294	213	272	366	1,145
1999					
Received	2,419	2,497	2,949	1,951	9,816
Approved	1,902	2,079	2,405	1,647	8,033
Denied	6	14	10	10	40
Withdrawn	300	257	269	305	1,131

Source: Department of Social Services.

As shown in Table 3, the department did not receive nearly as many license applications for child care centers as it did for child care homes. Further, although the applications received for child care homes increased during 1997, 1998, and 1999, the applications received for child care centers decreased during the same period. However, the figures in Table 3 show that the department approved approximately 90 percent of all applications for child care center licenses and denied less than 0.5 percent. Additionally, the figures indicate that the number of applications received for child care center licenses are evenly distributed throughout the State. Again, the number of child care center license applications withdrawn during 1997, 1998, and 1999 accounts for the difference between the number of applications received versus approved and denied. However, because of timing differences in this data within each region, figures within the specific years do not add up.

TABLE 3

Number of Applications for Child Care Center Licenses Received, Approved, Denied, and Withdrawn During 1997, 1998, and 1999

	Northern	Coastal	Southern	Los Angeles	Totals
1997					
Received	334	360	394	353	1,441
Approved	297	304	394	319	1,314
Denied	0	0	1	2	3
Withdrawn	34	22	26	45	127
1998					
Received	384	274	328	307	1,293
Approved	298	273	308	260	1,139
Denied	1	0	0	4	5
Withdrawn	36	22	15	57	130
1999					
Received	331	316	308	328	1,283
Approved	331	273	282	281	1,167
Denied	2	1	0	2	5
Withdrawn	50	17	20	44	131

Source: Department of Social Services.

CRIMINAL HISTORY CHECK STATISTICS: EXEMPTION REQUESTS RECEIVED, APPROVED, AND DENIED—1997, 1998, AND 1999

By law, the department must check the criminal histories of all child care facility owners, operators, employees, and adult residents. Thus, the figures displayed in the remaining tables are a mixture of licensees, employees, and adult residents—not all of whom are directly responsible for providing child care.

To generate this data, the department counted facility associations, defined as employment, ownership, and/or residence in a child care facility. Because a single person can be employed by more than one child care facility, some of the figures in Tables 4, 5, 6, and 7 are slightly overstated. The department estimated each person had an average of 1.3 facility associations.

Tables 4, 5, and 6 represent the number of exemption requests for persons with criminal histories the department received, granted, or denied in 1997, 1998, and 1999. The data show that over these three years, the department consistently granted more than 94 percent of the exemption requests it received. In addition, the number of exemptions the department granted nearly doubled between 1997 and 1999, rising from roughly 1,100 to more than 2,200 in 1999.

TABLE 4

Number of Exemptions Applied for, Granted, and Denied in 1997

Region	Applied	Granted		Denied	
Northern	352	343	97.4%	9	2.6%
Coastal	344	322	93.6	22	6.4
Southern	240	231	96.3	9	3.7
Los Angeles	228	223	97.8	5	2.2
Totals	**1,164**	**1,119**	**96.1%**	**45**	**3.9%**

Source: Department of Social Services.

TABLE 5

Number of Exemptions Applied for, Granted, and Denied in 1998

Region	Applied	Granted		Denied	
Northern	623	598	96.0%	25	4.0%
Coastal	436	407	93.3	29	6.7
Southern	331	303	91.5	28	8.5
Los Angeles	315	302	95.9	13	4.1
Totals	**1,705**	**1,610**	**94.4%**	**95**	**5.6%**

Source: Department of Social Services.

TABLE 6

Number of Exemptions Applied for, Granted, and Denied in 1999

Region	Applied	Granted		Denied	
Northern	773	744	96.2%	29	3.8%
Coastal	561	530	94.5	31	5.5
Southern	504	479	95.0	25	5.0
Los Angeles	499	478	95.8	21	4.2
Totals	**2,337**	**2,231**	**95.5%**	**106**	**4.5%**

Source: Department of Social Services.

Table 7 shows the number of individuals (licensees, employees, and adult residents) that the Department of Justice (Justice) reported to the department for 1997, 1998, and 1999 as not having criminal histories as well as those individuals for whom the department issued a clearance. The department may issue a clearance on its own accord if the crimes Justice reports are minor, such as a traffic ticket or similar infractions. However, the department could not identify what percentage of the data represented its own clearances versus Justice's clearances. The figures in this table have steadily increased over the past three years and top more than 58,000 for 1999. Comparing this table with Tables 4, 5, and 6, which show the number of individuals who request criminal history exemptions, shows that most licensees, employees, and adult residents do not need to request criminal history exemptions.

TABLE 7

Number of Individuals Cleared by Justice or the Department

Region	1997	1998	1999
Northern	9,671	11,475	13,583
Coastal	10,822	12,792	15,280
Southern	10,717	12,645	15,283
Los Angeles	9,095	10,455	14,022
Totals	**40,305**	**47,367**	**58,168**

Source: Department of Social Services.

State law prohibits the department from granting criminal history exemptions to individuals who commit certain crimes, such as murder and rape. Table 8 summarizes the number of individuals who were ineligible to apply for exemptions because of the nature of their crimes. There are relatively few applicants that fall into this category, although the table confirms that the number is increasing.

TABLE 8

Number of Individuals Ineligible to Request Exemptions Under State Law

Region	1997	1998	1999
Northern	2	5	7
Coastal	1	6	8
Southern	3	7	4
Los Angeles	3	4	12
Totals	**9**	**22**	**31**

Source: Department of Social Services.

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APPENDIX B

A Review of Criminal History Exemptions the Department Granted in 1998 and 1999

The Department of Social Services (department) is responsible for granting criminal history exemptions to potential child care facility licensees and employees, as well as adults living in child care homes. To understand the range of criminal histories the department exempts, we reviewed a sample of 25 exemptions the department granted in 1998 and 1999. Table 9 presents the data on this sample. The last column focuses on arrest dates rather than conviction dates because the time elapsed since an individual was last arrested and charged with a crime is more relevant than the time it took the courts to resolve the issue. In addition, we present the number of arrests and charges in this table because prior to September 1999, the department received all charges filed upon arrest for individuals whose background it reviewed. After this date, a court ruling stemming from *Central Valley v. Younger* limited the amount of arrest information the Department of Justice (Justice) could disclose to the department to certain serious charges listed in statute.

Our sample reflects a broad range of criminal histories, from one individual with 10 arrests and 11 charges (sample number 4) to another person with as many as 6 felony and misdemeanor convictions (number 1) all the way down to a single arrest, charge, and conviction (numbers 7, 10, and 22). Additionally, some individuals had not been arrested for as long as 21 years, while others had an arrest only one year before the department granted their exemption.

TABLE 9

Criminal Histories of 25 Individuals Granted Exemptions in 1998 and 1999

Sample Number	Arrests	Charges Filed	Convictions		Years Since Last Arrest to Granting of Exemption
			Felony	Misdemeanor	
1	5	9	4	2	4
2	2	2	2	0	11
3	2	2	2	0	6
4	10	11	1	2	12
5	6	9	1	1	7
6*	2	2	1	0	8
7	1	1	1	0	21
8*	1	2	1	0	5
9	1	2	1	0	5
10	1	1	1	0	7
11*	1	3	0	3	7
12	4	8	0	2	1
13	2	3	0	2	6
14	2	3	0	2	9
15†	2	2	0	2	8
16	3	5	0	1	8
17	2	5	0	1	3
18	2	2	0	1	7
19	2	3	0	1	8
20*	1	4	0	1	7
21	1	2	0	1	6
22†	1	1	0	1	10
23	1	3	0	1	6
24*	1	3	0	1	13
25	1	3	0	1	1

* Due to a court order, Justice sent an edited rap sheet to the department rather than a rap sheet showing all criminal activity for these individuals. Therefore, these listings may not show the total number of arrests and charges.

† Individual self-disclosed crimes. The rap sheet did not reflect criminal activity.

Agency's comments provided as text only.

Department of Social Services
744 P Street
Sacramento, California 95814

July 21, 2000

Mary Noble, Acting State Auditor*
Bureau Of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Noble:

Subject: California Department of Social Services Response to Bureau Of State Audits Report On Licensed Child Care Facilities

This memo is in response to audit report # 2000-102 dated July 17, 2000, entitled "Department of Social Services: To Ensure Safe, Licensed Child Care Facilities, It Needs to More Diligently Assess Criminal Histories, Monitor Facilities, and Enforce Disciplinary Decisions".

The Community Care Licensing Division of the Department of Social Services is pleased to respond to the findings and recommendations of the audit of child care licensing activities. The highest priority of the Licensing Division is to ensure adequate protections for children in licensed child care settings. In keeping with this priority the Department is committed to continuous improvements in carrying out this important public trust. A brief program background and our audit report responses are enclosed.

Sincerely,

(Signed by: Rita Saenz)

RITA SAENZ
Director

Enclosure

*California State Auditor's comments begin on page 83.

Background

Before commenting on the specific audit recommendations in the report, we would like to provide background information on recent program accomplishments and directions we have established for the child care licensing program. This information is important for understanding the context of our responses to the audit.

During the past three years the Department has increased the number of staff in Community Care Licensing from 862 to 1181. During this same period the number of children served by licensed child care facilities has increased from approximately 966,000 to 1,021,000.

We have also implemented significant policy reforms to enhance the health, safety and well being of children in care. These include:

- Expanding the amount of time spent by licensing staff in each facility as well as the range of the review.

- Increasing the frequency of visits to family child care homes by adding additional visits to homes with serious compliance issues.

- Increasing the quality of family child care by a 3 million dollar investment in a licensee training program entitled "Family Child Care at its Best."

- Expanding outreach, mediation and technical assistance for child care providers through the expansion of the Child Care Advocate Program.

- Strengthening the child care background check by implementing new statutory and policy mandates, implementing Live Scan in 21 sites and expediting the clearance process.

- Conducting training academies specifically for county staff who license family child care homes. 11 county academies have been conducted since March 1999.

- Increasing monitoring of counties that license and monitor family child care homes as agents of the state.

- Strengthening operational procedures and training for licensing staff.

- Issuing new policy and procedures and training staff on enforcement, administrative actions, and complaint visits.

The licensing background check provides significant protections to children in care. Annually the licensing program completes background checks for more than 200,000 individuals. This number is increasing at a rate of about 15 percent each year. Approximately 4 percent of these individuals are routinely excluded from ever being a licensee or caregiver. We recognize that it was difficult for the auditor to draw conclusions and recommendations from a limited review of 25 background check cases. However, we understand that all exemptions decisions rendered were determined to be within departmental guidelines. Many of the audit recommendations will further strengthen the background check program.

On a regular basis approximately 250 licensing analysts monitor the activities of more than 55,500 licensed child care facilities. This monitoring includes unannounced facility visits, the review and investigation of complaints and other monitoring activities that help ensure the health, safety and well being of children in childcare. We were pleased that the auditor concluded that the "department appears to effectively investigate complaints it receives regarding child care facilities."

We make annual inspections of approximately 25,000 childcare centers and family child care homes and investigate over 8,000 complaints involving licensed childcare. The monitoring and oversight of childcare centers and homes are the highest priority activities of licensing field staff. The adoption of several of the audit recommendations will further strengthen the licensing program.

When our monitoring activities indicate a serious problem in a licensed facility we often must take an administrative enforcement action. We were again pleased to note that the auditor concluded, "the Department is generally aggressive in the legal actions it seeks." During 1999 the Department took legal action to suspend, revoke or take other administrative action against 769 childcare licensees, applicants, and people associated with those facilities. These legal actions are always designed with the primary objective of the protection of vulnerable children in care.

Audit Recommendation Response

Chapter 1

The Department's Evaluations of Criminal Histories Should Be More Cautious, Thorough, and Timely

Item 1: To further protect children in licensed child care facilities, the Legislature should:

Recommendation:

Assess the department's level of discretion to exempt individuals with criminal histories and determine whether that level is appropriate.

Response:

We concur that this is an appropriate subject for legislative review. The Legislature has considered and passed several bills related to this issue. Most recently, the following four bills have strengthened the background check requirements for individuals in licensed child care facilities.

- Senate Bill 1984 (Bergeson), Chapter 1267, Statutes of 1994. This statute allows the Department to obtain full disclosure of criminal history information, that includes arrests of certain crimes.

- Senate Bill 933 (Thompson), Chapter 311, Statutes of 1998: Expanded the list of who must be checked, required the completion of a California clearance before family child care applicants can be licensed, required Federal Bureau of Investigation checks for all, and instituted a $100 fine for failure to submit prints as required.

- Senate Bill 1992 (Chesbro), currently being considered in the Legislature would expand the list of serious crimes the Department is authorized to receive from the Department of Justice (DOJ). The expansion would include crimes referenced in the Education Code and serious felonies as defined in Penal Code Section 1192.7.

- Assembly Bill 2431(Runner), currently being considered in the Legislature would add additional crimes to the nonexemptible crimes list.

Item 2: To further protect children in licensed child care facilities, the Legislature should:

Recommendation:

Consider pursuing laws that automatically deny an exemption on a greater range of crimes to make criminal history standards for child care facility owners, operators, employees, or residents comparable to those used for public school teachers. Also the Legislature should consider expanding the variety of serious arrests the department may review.

Response:

We concur. SB 618 (Chapter 934, statutes of 1999) requires the Department of Social Services to study and make recommendations for improving the criminal background check process. As a result, the Department has recommended amendments that have been incorporated into Senate Bill 1992 (Chesbro). The recommendations include expanding the list of non-exemptible crimes and obtaining the same serious arrest information provided to public schools.

The Department also requires all adults who have contact with children be screened through the Child Abuse Central Index (CACI) check to determine if an individual was ever involved in a reported case of child abuse. The CACI is not a requirement for public school teachers. Furthermore, the Director recently adopted updated exemption criteria that significantly strengthens the Department's criminal record screening practices and exemption decision making. The revised exemption criteria further reduce the risk of predictable harm to children.

Item 3: To further protect children in licensed child care facilities, the Legislature should:

Recommendation:

Clarify the existing FBI check requirements to specify whether individuals may have contact with children pending a FBI check. In addition, the Legislature should consider modifying the FBI check requirements to address situations where those who require an FBI check do not truthfully disclose crimes on their applications.

Response:

We concur. Senate Bill 933 (Thompson), Chapter 311, Statutes of 1998, extended the Federal Bureau of Investigation (FBI) criminal history check to all individuals. We believe current departmental policies and procedures are consistent with both the wording and the intent of SB 933. The legislature should revisit and clarify the FBI check requirement, especially in light of performance data provided to the auditor that strongly suggests the FBI check has not proven to be an effective supplement to the background check process. (1)

Item 4: To ensure that criminal history exemptions are not granted to individuals that may pose a threat to the health and safety of children, the department should:

Recommendation:

Follow its new procedures that require management to review all criminal exemptions involving felonies. Additionally, the department should require management to periodically review and approve a representative sample of all other exemptions granted.

Response:

We concur. Effective April 1, 2000, a manager's review is required for all exemption cases involving a felony. We will also evaluate a sampling of other exemption cases as a part of the division's quality assurance efforts.

Item 5: To ensure that criminal history exemptions are not granted to individuals that may pose a threat to the health and safety of children, the department should:

Recommendation:

Exercise caution when granting exemptions and actively consider all available information, not just rap sheets. When considering the additional information, the department should perform any needed follow-up while it determines whether to grant someone an exemption. To the extent that the department believes it needs statutory changes to appropriately carry out its responsibilities, the department should seek such changes.

Response:

We concur in principle. Any appropriate information obtained through the exemption evaluation process that cannot be factored into the exemption decision will be referred to the field for potential follow-up. However, we believe that the focus of the criminal
(2) background check must remain on criminal convictions and serious arrests. Licensing staff do not have the authority or resources to conduct extensive personal background investigations on licensees or their employees, such as those required for law enforcement officers.

In the case cited by the audit team, the report concluded that licensing staff should have fully investigated a subject's mental health history. This was based on the applicant's statement that she was diagnosed as a "manic depressive." However, because of the
(3) American Disability Act, the disclosure of a mental health issue is not sufficient to trigger a mental health investigation. The licensing agency must have evidence of a demonstrated threat to children before we can delve into mental health or other non-criminal background issues.

In addition, the licensing criminal background check is not a substitute for the licensee's responsibility to check an applicant's prior employment history, health screening information and references. The licensing program takes more precautions with applicants for licensure and holds the licensee fully accountability for the employment decision of a staff person in a child care facility.

Item 6: To process criminal history checks as quickly as possible the department should:

Recommendation:

Establish a goal within which it must notify individuals that they must request a criminal history exemption and work to make certain that all such notices are sent within the prescribed time frame.

Response:

We concur. Prior performance goals have been updated to account for all critical background check activities. Additionally, the Licensing Information System is being upgraded to include an enhanced tracking system for all background check functions.

Item 7: To process criminal history checks as quickly as possible the department should:

Recommendation:

Develop safeguards to help ensure that municipal agencies provide requested information promptly so that it meets its goal of granting or denying exemptions within 45 days.

Response:

We concur in principle. However, there are practical limitations to what we can accomplish. Each background check analyst has a tickler system for monitoring the document requests they send to municipal agencies. However, the Department does not have control or jurisdiction over these municipal agencies to require them to respond promptly. More importantly, it is the accuracy, rather than the speed of the exemption decision that is most relevant to the safety of children in care.

Item 8: To process criminal history checks as quickly as possible the department should:

Recommendation:

Use its tracking system to identify cases that are not receiving sufficient attention from analysts or where those seeking criminal history exemptions are not providing information promptly, and take action to close or expedite those cases.

Response:

We concur. We have a tracking system that we will continue to upgrade. A new background check management information system is presently under development and will be implemented later this fiscal year.

Item 9: The department should reevaluate its current policies and procedures for implementing the FBI record screening requirement and take the necessary steps to ensure that it:

Recommendation:

Reviews all individuals' FBI records in accordance with the law.

Response:

We concur. The Department has reevaluated its current policies during the course of (1) the audit and has reconfirmed that the policies are in compliance with the law and the Legislative intent.

Item 10: The department should reevaluate its current policies and procedures for implementing the FBI record screening requirement and take the necessary steps to ensure that it:

Recommendation:

Properly applies the requirements that allow individuals to work with or be in close proximity to children while their FBI check is pending.

Response:

(1) We concur. The Department has already reevaluated its current policies and has reconfirmed that the policies are in compliance with the law and the Legislative intent.

Item 11: To ensure that parents can make informed decisions about child care, the department, working with the Legislature, should:

Recommendation:

Require disclosure of criminal history exemptions.

Response:

We concur in principle. However, there are significant policy issues with this type of disclosure. If Assembly Bill 2431 (Runner) becomes law, this recommendation will be accomplished. This bill proposes to require licensed child care providers to inform parents, if asked, if they or their employees have a criminal record exemption. Parents would be informed of their right to ask on the Notification of Parent's Rights form (LIC 995). While such a mandate may be legally feasible, enforcement by the licensing agency may be highly problematic. While the issuance of an exemption can be revealed, the licensee will not be able to discuss any details of an individual's prior criminal history. Consequently, this type of disclosure may not prove satisfying to parents or be readily embraced by licensees.

Item 12: To ensure that parents can make informed decisions about child care, the department, working with the Legislature, should:

Recommendation:

Determine the types of criminal histories and lengths of time this requirement should apply to, such as, disclosing for five years an exemption received for certain convictions and serious arrests.

Response:

We concur in principle. However, this may prove to be confusing to our licensees. We plan to review our procedures to determine whether this concept is feasible or could be enforced.

Chapter 2

Weaknesses Exist in the Department's Monitoring Process

Item 13: To ensure that childcare facilities are operating in compliance with state law and regulations, the department should:

Recommendation:

Review and modify its complaints processing procedures so that all necessary complaint follow-ups occur.

Response:

We concur that complaint-processing procedures should ensure that necessary follow-ups occur. We also agree that procedures should be developed to require that Licensing Program Supervisors review control books more frequently to ensure that complaint follow-ups are completed. We also appreciate the comments in the report regarding the effectiveness of complaint investigations by the licensing agency. However, we do not concur that complaint follow-up procedures need to be modified to require that the supervisor sign-off to verify completion of all plans of correction visits associated with a substantiated complaint. As indicated in the Evaluator Manual, the supervisor sign-off on the complaint should occur only when he/she is satisfied that the Licensing Program Analyst has conducted a thorough investigation, has arrived at the correct complaint finding and has developed an appropriate plan of correction. During this entire process the supervisor works closely with the licensing analyst to ensure appropriate investigation steps are followed. The supervisor monitors the progress of the facility's plan of correction through discussions with the licensing analyst or reviewing his/her control book. (4)

Not all complaints require additional follow-up from the licensing agency. Certain complaints may be corrected immediately, or may result in a direction to a behavior change that is not readily verified. In those cases, the complaint information is used to document a pattern of behavior that will be used to analyze future licensing evaluations.

Item 14: To ensure that childcare facilities are operating in compliance with state law and regulations, the department should:

Recommendation:

Revise its policies and procedures to require the district office to cite licensees within 10 days following an RIS investigation.

Response:

We concur that in most circumstances, district office citations for licensing violations should occur within 10 days of receipt of substantiated complaint findings. The Department has procedures for the district offices to follow when issuing findings after the RIS substantiates a complaint. We will revise these instructions to specify that the district office cite the licensee for violations within 10 days unless there is a specific reason to delay the citation. More time may be needed if the District Office disagrees with the finding, is investigating other elements of the complaint, or feels that more investigation is necessary and needs to discuss this with the supervising investigator or the Regional Manager. More time may also be needed if the information needed to make a decision is not available, for example, completion of a related police investigation.

Item 15: To ensure that childcare facilities are operating in compliance with state law and regulations, the department should:

Recommendation:

Conduct facility evaluations as required within the timelines established for both childcare centers and childcare homes.

Response:

We concur that facility evaluations should be conducted within established timelines for both child care centers and family child care homes. During both 1998 and 1999, an estimated 12,000 family child care home visits and 13,000 child care center visits were due. Our statistics, and the findings in the report, indicate that the large majority of visits are completed timely. However, our goal is to make all visits timely. We are particularly concerned with situations in which a visit has not been completed for an extended period of time. We will provide additional instructions to district offices to emphasize the importance of completing all facility evaluation visits within required timeframes.

Each licensing analyst receives a Licensing Information System (LIS) report monthly, which reflects visits that are due within the next 150 days, and any visits that are over due. The report is included in the licensing analyst caseload control book and is used to provide a tickler system of visits to be accomplished each month. The LIS also produces a statistical report monthly that includes information about visits made and pending. The visit reports for each licensing analyst are also provided to the supervisor and manager in the District Office. Typically, the supervisor will ask the licensing analyst to explain the status and projected completion date for any visits that are listed as overdue. Regional managers also receive monthly summary reports listing the number of visits due and overdue.

Other workload priorities in certain circumstances may result in the need to delay some facility evaluations. District Offices also have responsibilities for complaint investigations, application processing, legal actions, hearings and facility closures. Offices may also experience both temporary staff vacancies and unpredictable surges in workload. In those circumstances, it may be necessary to delay evaluation visits for a period of time. In these cases, the situation will be discussed with the supervisor, and arrangements made to complete the visits at a later date, or transfer work to another licensing analyst. When delays are necessary, there is a protocol in place to ensure that only visits to facilities without serious problems are deferred.

Item 16: To ensure that childcare facilities are operating in compliance with state law and regulations, the department should:

Recommendation:

Track and monitor evaluations that are not performed on time until the evaluations are conducted.

Response:

We concur that tracking and monitoring systems should be in place to ensure the completion of facility evaluations that have not been completed as originally scheduled. Based on audit findings, we will review the current system to determine needed improvements.

Item 17: To ensure that childcare facilities are operating in compliance with state law and regulations, the department should:

Recommendation:

Establish policies and procedures to ensure that only facility evaluations that are conducted are counted as such.

Response:

We concur. The Department will establish procedures and policies within the next 60 days to assure that only completed visits are reported as such. These instructions will also specify methods for tracking facility evaluations that cannot be accomplished after repeated attempts. We recognize that a uniform system needs to be developed to track these cases. We will also modify Licensing Information System (LIS) to provide an additional entry for visits attempted, but not completed. We expect the LIS modifications will be completed within the next 12 months. Additionally, the Department will train district office staff on the new procedures. Currently, we provide training on new program requirements at least twice annually. The new procedures and policies will be incorporated into the next scheduled training to ensure that there is a common understanding and consistent implementation.

This addresses the auditors' concerns that several visits in their sample were counted as complete when in fact the visit had not been made. This is brought about by the limitations of our current Licensing Information System (LIS). By statute, visits are unannounced. This means that the licensee may not be at home at the time of the visit. Currently, the LIS has no mechanism to reflect visits that were attempted, sometimes repeatedly, but not completed. As the attempted visit in these cases does involve an actual site visit to the facility, in some offices the visit was coded into the LIS as completed. For two of the cases, it was discovered that the licensees were in the process of forfeiting their license because they were no longer in business. (5)

Item 18: To ensure that childcare facilities are operating in compliance with state law and regulations, the department should:

Recommendation:

Identify and track the evaluations needed to meet the 20 percent childcare home visit requirement in state law.

Response:

We concur that it is necessary to identify and track the 20 percent annual evaluations and believe that we have a system in place to meet these requirements.

Effective July 1999, the Licensing Division received funding to conduct annual case management visits to 20 percent of licensed family child care homes. We have now implemented procedures which require an annual visit to homes that have had a substantiated complaint or a citation for a serious violation within the last 12 months. We estimate that the number of homes requiring the annual visits will meet the 20% requirement. District Offices and county licensing agencies received training in the new visit requirement in January and February 2000. Currently, the additional visits are tracked manually. The Licensing Information System was modified to track this visit requirement effective March 30, 2000 for visits that will be scheduled next year. As the new tracking system is based on homes, and not visits completed, this eliminates the possibility of duplicative counts. (6)

The Department fully expects to meet the 20 percent requirement in the second year. We will be tracking the actual numbers of annual visits and will make adjustments as appropriate to ensure that 20 percent of the homes are visited annually.

Item 19: To ensure that district offices are properly supervising analysts' work, the department should:

Recommendation:

Establish review standards requiring the district offices to periodically review evaluation reports prepared by its staff.

Response:

We concur. However, we believe that current systems are adequate to provide this on-
(7) going oversight. All new licensing analysts are on probation for a year, and initially the supervisor will generally review all work done by the licensing analysts. As the licensing analyst becomes trained and gains experience and the supervisor verifies the licensing analyst's skills and judgement, the supervisor will gradually empower them to act without 100% review. Because the licensing analyst's job is a field job, licensing analysts are expected to function independently. Once trained, they must be able to operate with minimal supervision and review. However, there are still many situations in which it is necessary for the supervisor to review the licensing analyst's work. The supervisor signs off on all complaints and some applications, reviews all problem facility files, signs off on waivers and exceptions, answers calls from unhappy licensees, responds to formal citation appeals, and reviews investigative reports and potential legal actions. In all these cases, the supervisor looks at all the licensing analyst's work relevant to the situation. In this fashion, the supervisor can get a clear picture of the licensing analyst's work and identify any problem areas. When problems are identified, the amount of review may be increased to ensure that the problem is corrected.

Item 20: To ensure that district offices are properly supervising analysts' work, the department should:

Recommendation:

Ensure that each district office is scheduling and performing its QEP evaluations as required. Further, consider modifying this program to make key functions, such as facility evaluations and complaint investigations and follow-ups, mandatory parts of each evaluation.

Response:

We concur with the need for timely Quality Enhancement Process (QEP) evaluations. We acknowledge the need to establish better tracking systems to ensure that QEPs are completed as scheduled. We do not concur that the current process needs to be modified.

The licensing supervisor is required to complete two separate performance reviews each year for each licensing analyst. One is the Department's Individual Development Plan, which is required annually during the month of the licensing analyst's birthday. In this document, the supervisor gives a general assessment of the licensing analyst's work, indicates areas where improvement is needed, and works out with the licensing analyst a training and development plan for the next year designed to address any deficiencies in performance. The other document is the QEP in which different areas of the licensing process are selected for review each year. For the process reviewed, the supervisor will review all relevant paperwork relevant to that process, and in some cases, may make a visit with the licensing analyst or attend an orientation or a conference to observe the licensing analyst's performance. The QEP is designed to provide choices for the supervisor on the selection of four functions to be reviewed each year and the timing of the process. Review of selected portions is to be completed for each licensing analyst by December of each year. We will develop a more comprehensive tracking system that will record QEPs completed or reasons why they have been delayed, and will review the results to determine modifications to the process in the future.

Item 21: To ensure that district and county offices authorized to license childcare facilities are operating effectively and are properly licensing and monitoring facilities, the department should:

Recommendation:

Develop and maintain a schedule to periodically review each county's childcare facility licensing operations.

Response:

We concur with the need to periodically review each of the 10 counties authorized to perform the child care licensing function. Nine of the ten counties are in the Northern Region. Our effectiveness in this area has grown since 1998 with additional staff resources that were redirected from our state licensing offices to increase this oversight. In addition the Department is also providing training for county licensing staff. The auditors identify the completeness of the process now in use and recognize that seven of the nine counties in the Northern Region jurisdiction were reviewed in 1999. These formal reviews are now being scheduled on a biennial basis. Evaluation visits will be made more often if necessary based on our ongoing, day to day experience with the county. In addition, follow-up visits are made to ensure adequacy and timeliness of county corrective actions.

Item 22: To ensure that district and county offices authorized to license childcare facilities are operating effectively and are properly licensing and monitor ing facilities, the department should:

Recommendation:

Establish policies and procedures to ensure that the regional offices periodically and consistently assess district offices' operations.

Response:

We concur with the recommendation that there should be on-going evaluations of district offices. Two factors influence the way we intend to address this issue. First, we believe that the relationship between the regions and district offices is more complex than the report indicates. The regions have operational involvement with the district offices on a day-to-day basis, and are responsible for more than just oversight functions. Because of this involvement, we believe that periodic monitoring of both district office operations and regional office operations should be performed by central office staff, rather than a self-review by field staff. We have committed to establishing such a quality control unit. The steps involved in establishing this unit include: obtaining necessary staff, reviewing and updating expectations for regional and district office performance, revising the review tool and training staff.

The second consideration is that regional managers currently utilize extensive management information reports, ongoing work load tracking systems and ad hoc control systems to oversee district office performance. Information gathered during routine and frequent communication between regional and district office managers, and with other field staff, provider advisory groups, other agencies, public contacts, and media contacts, gives regional managers additional information to monitor district office operations. Use of the district office review tool whether as a full review or a partial review to address specific issues that have been identified is also useful in regional oversight.

The division is in the final stages of implementing a Performance Measurement Program which will establish formal performance indicators, and identify data sources that will be used for evaluating performance. Until the formal quality control function is established, we believe that the current efforts of the regional managers and the upcoming Performance Measurement Program are sufficient for district office oversight.

Chapter 3

The Department Should Expedite Legal Actions and Better Enforce Disciplinary Decisions

Item 23: To ensure that it processes all legal cases promptly, the department should:

Recommendation:

Reassess its goal of filling a case pleading within six months of receiving the district offices' request for a legal action and strive to shorten it. Once it sets a more appropriate time goal for processing legal actions, the department should ensure that its processing goals for legal cases are met.

Response:

The Department concurs that it should attempt to file legal actions as soon as possible to protect the health and safety of clients. Thus, the Legal Division ensures that cases that pose the most immediate threat to clients are filed first, such as cases requiring the immediate closure of a care facility or exclusion of an individual from a care facility. Additionally, the Department has procedures for a District Office to request that an expedited pleading be filed. The Legal Division's ability to meet a shorter turn around period is constrained by an increase in the number of administrative actions requested. As noted and acknowledge on page 55 of the report, some cases take longer to prepare due to the need to conduct further investigation to factually and legally support the administrative action. Finally, the Department stands by its statement on page 55 of the report in which the Legal Division's Deputy Director stated that it was unrealistic, based on workloads, to have a goal of less than six months without compromising the quality of its existing work product. 8

Item 24: To allow the district offices to enforce all license revocations and facility exclusion decisions promptly, effectively and consistently, the department should:

Recommendation:

Establish policies and procedures to guide district offices. The guidelines should include time frames within which district offices must make two types of visits: one to make certain that individuals with revoked licenses are no longer caring for children, and another to ensure that individuals who have been barred from child care facilities have not been present. In addition, the guidelines should clearly specify the circumstances when a visit is not necessary and the type of information the district office may use as evidence that an individual is complying with the revocation or exclusion order.

Response:

Note: Page numbers have changed.

We concur. The Department acknowledges the importance of following up on exclusions and revocations, and will review policies and procedures to ensure appropriate guidance is provided to district offices. The procedures will establish recommended timelines for follow-up visits and address the circumstances when a visit is not necessary to determine compliance with the order. As noted in the report, the Department issued new facility closure procedures in April 2000. The new procedures establish a planning process to ensure that the closure is implemented appropriately and with minimal inconvenience to children and their families. We will review these procedures to ensure that instructions are provided to verify that the facility closes. We will also develop specific procedures for district office follow-up to verify that an individual excluded from a facility is not present. Any such verification can only be a point in time determination.

Item 25: To monitor licensees placed on probation as a result of legal actions the department should:

Recommendation:

Establish policies and procedures to guide district offices in creating formal plans. These plans should provide for prompt and consistent follow-ups throughout the probation. In addition, the department should periodically review these plans to ensure that licensees on probation are not released from probationary status after only limited department monitoring.

Response:

We concur. The Department agrees that it is important to monitor the progress of probationary facilities and will establish policies and procedures to ensure adequate monitoring and follow-up of such facilities. As they are developed, the new procedures and policies will be incorporated into the scheduled training before the end of this year to ensure consistent implementation.

COMMENTS

California State Auditor's Comments on the Response From the Department of Social Services

To provide clarity and perspective, we are commenting on the Department of Social Services' (department) response to our audit report. The numbers correspond with the numbers we have placed in the department's response.

(1) As we state in Chapter 1 of our report, the department's interpretation of the Federal Bureau of Investigation (FBI) background check requirement differs from ours, and the department's interpretation does not fully protect children. We believe the law states that the department cannot authorize any individual who discloses criminal convictions to begin caring for children until an FBI check is complete. However, the department interprets the law to authorize it to allow people who disclose criminal convictions to begin caring for children before going through the mandatory FBI check. We recommend the Legislature clarify the existing FBI requirements. After the Legislature does so, the department should work to implement the FBI check to the fullest extent possible.

(2) The department believes it must focus on criminal convictions and serious arrests during its background check process. However, as we state in Chapter 1, it must also have substantial and convincing evidence that persons convicted of crimes are of sufficient "good character" to warrant a criminal history exemption. We remain concerned that the department's review may be too narrow and therefore not cautious enough to ensure the health and safety of children in child care facilities. Moreover, as we recommend, to the extent that the department believes it needs statutory changes to appropriately carry out its responsibilities, the department should seek such changes.

(3) In the case referenced by the department and discussed in Chapter 1 of our report, the individual was convicted of assault. In her disclosure statement, the woman attributed the assault to her mental condition. As we state in our report, the department has an obligation under state regulations to ensure that

individuals it allows to care for or come in contact with children are "physically and mentally capable of performing assigned tasks," and it can request mental health screenings when necessary. In this case, the department could have but did not take those additional steps.

(4) In Chapter 2 of our report, we conclude that the department does not always follow up on complaint investigations and that one explanation is a lack of supervisory review. If the district office supervisors are performing the reviews as the department states, our report findings are evidence that the department's current methods are not effective. We encourage the department to take the necessary steps to reevaluate its complaints process to make certain that complaints are followed up and corrected.

(5) Although the department states that it discovered two of the licensees in our sample were in the process of forfeiting their licenses because they were no longer in business, it is important to note that the department was not aware of this fact until we questioned it about overdue evaluations. Furthermore, because the department did not conduct timely evaluations, it does not know when the two child care homes stopped operating. Based on our analysis, these two homes may have been operating for at least four years without an evaluation, and therefore, by not performing such evaluations, the department may have allowed deficiencies at these two child care homes to needlessly persist.

(6) The department's statement conflicts with information it previously provided to us. Our conclusion in Chapter 2 that the department is counting visits rather than homes to meet the 20 percent requirement was based on information it provided during the audit. Despite its current response, we continue to believe the department should identify and track the evaluations needed to meet the 20 percent requirement set by law.

(7) As stated in Chapter 2 of our report, department analysts have a significant ongoing responsibility for children's welfare. However, supervisors at two of the three district offices we visited informed us that analysts' supervision decreases following their first three to six months. After that time, supervisors limit their reviews to areas such as complaint investigations. In addition, not all of the district offices are consistently using the quality enhancement process (QEP), one of the department's current processes for assessing analysts' performance. Thus, despite the department's claims, its current systems are not adequate to

provide needed ongoing oversight, and opportunities exist for the department to ensure that district offices are properly supervising analysts' work.

8 As discussed in Chapter 3 of our report, six months to file a case seems imprudent because the licensee has already demonstrated an inability to comply with child care laws and regulations, and thus legal action is necessary. In addition, noncompliance with these laws and regulations places children's health and safety at risk. By allowing six months or more to pass in situations like these, the department may be risking the health and safety of children. Therefore, the department should take the necessary steps to file all cases in a time frame less than six months.

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Agency's comments provided as text only.

Office of the Attorney General
Bill Lockyer
Attorney General
1300 I Street, Suite 1740
Sacramento, California 95814

July 21, 2000

Hand-Delivered

Ms. Mary P. Noble
Acting State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: BSA Audit of the Department of Justice's Policies and Procedures for Supplying Information to the Department of Social Services

Dear Ms. Noble:

The Department of Justice has reviewed the Bureau of State Audits' (BSA) draft excerpts report to be issued as part of the audit of the Department of Social Services (DSS). On behalf of Attorney General Bill Lockyer, I am responding to your recommendations as follows:

- **To Provide the Department with the most complete information possible on which to base its exemption decisions, Justice should continue to work to help ensure that all criminal history information is forwarded from municipal agencies to Justice in a timely manner.**

Statewide coordination of criminal history information reporting poses unique challenges to state and local law enforcement agencies. The Department of Justice (DOJ), as California's statutorily mandated repository of criminal records, has long recognized the potential problems created by under-reporting and the impact of those problems on our ability to provide accurate and up-to-date information regarding applicants' criminal histories to employers and licensing agencies.

The importance of complete record information cannot be overstated. As noted in the BSA report, case law prohibits DOJ from releasing arrest information to an employer or licensing agency unless a disposition of the arrest is known. *(Central Valley* v. *Younger* (1989) 214 Cal.App.3d 145 [262 Cal.Rptr. 496].) As a result, when a prospective candidate or incumbent has an arrest record, the arrest cannot be reported to the employing or licensing

agency until it has been linked to a disposition. In those cases where no disposition for the arrest is on file, the case is assigned to DOJ staff who personally contact local agencies to collect all information necessary to determine whether the arrest can be reported to the requesting agency. This process takes a significant amount of staff time and causes delays in reporting information to employing or licensing agencies.

In an effort to improve this process, DOJ has worked closely with local agencies and the Legislature to develop policies and programs to promote timely, complete and accurate criminal record reporting by local agencies.

To improve reporting of arrests, DOJ worked closely with legislative leaders to secure funding for live scan technology. This system accelerates the submission of arrest data from local law enforcement agencies by enabling local law enforcement agencies to submit arrest data, including fingerprint images, to DOJ in electronic format. This process has improved significantly the timeliness of arrest reporting and DOJ's ability to process the information.

In addition to the improvements in arrest reporting made by the live scan program, DOJ has developed programs to facilitate timely and accurate submission of disposition information by the various court systems. One such methodology utilized by DOJ is the Automated Tape Disposition Reporting (ATDR) Program. ATDR allows courts to transmit their disposition information to DOJ via magnetic tape, rather than mailing conventional paper documents. DOJ can download the tape directly to the Automated Criminal History System (ACHS), where previously manual data entry was required. This process accelerates submission of new disposition information and increases accuracy.

In those cases where a disposition is not on file, DOJ has developed procedures to streamline acquisition of missing information and expedite reporting of arrest information to employers and licensing agencies. Rather than placing thousands of telephone calls to retrieve the missing disposition information, DOJ is installing modem based technology in court agencies to allow the DOJ direct access to court data. Disposition information is retrieved far more efficiently through this technology because overburdened court employees are not required to search for missing disposition information and DOJ has instant access to court records.

Last year, the Attorney General convened a task force, comprised of representatives from local law enforcement, the judiciary and state agencies, to develop long term solutions. In combination with our existing efforts, their recommendations, due next spring, will improve criminal record reporting statewide.

- **To ensure that the department receives information on subsequent criminal activities of individuals who have been approved to own, operate, work in, or reside in child care facilities, Justice should establish a system to track notices sent to the department about additional crimes committed by a previously-approved individual.**

The BSA reviewed 124 criminal history record folders containing DSS licensing inquiries during the DOJ segment of their audit of the DSS-Community Care Licensing Division. Of the 124 criminal history record folders reviewed, 18 contained entries with subsequent arrest activity. Of the 18, only nine qualified for dissemination. Four entries were not released according to established DOJ procedures.

Subsequent arrest notification is the only non-automated function in the applicant screening process. As a result, it is more vulnerable to human error, such as misinterpretation of data or misplacement of paperwork.

DOJ is currently in the process of automating the subsequent arrest notification process. However, automation of this process is one component of the redesign of the entire Automated Criminal History System, which will take several years to complete.

In the interim, DOJ has reviewed the subsequent arrest notification process and made modifications to increase quality control. For example, absence of a central storage site and excessive handling of paperwork created opportunities for misplacement of documents. The Applicant Processing Program is in the process of acquiring high density filing cabinets for temporary storage of subsequent arrest notification paperwork. Subsequent arrest notification cases will be assigned to specific staff to increase accountability.

In summary, automation of the subsequent arrest notification process will significantly reduce the errors in this process. To improve accuracy during the transition to an automated system, DOJ has reviewed and made improvements to its manual system.

Thank you for this opportunity to comment on the BSA report. If you have any questions or require additional information, please contact Georgia Fong from the Office of Program Liaison and Audit Services at (916) 324-8010.

Sincerely,

(Signed by: Steve Coony)

STEVE COONY
Chief Deputy Attorney General
Administration and Policy

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
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