

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

REPORT NUMBER 2000-102, AUGUST 2000

Audit Highlights . . .

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.*
 - 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.*
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The Joint Legislative Audit Committee requested that we assess the Department of Social Services' (Social Services) policies and practices for licensing and monitoring child care facilities.

Finding #1: Social Services has significant discretion and should use greater caution when issuing criminal history exemptions.

Social Services has broad statutory authority to grant exemptions to the law that prohibits anyone with a past criminal conviction from caring for children or residing in a licensed child care facility. In 1999 Social Services approved 95 percent of the exemption requests it received. Although people convicted of such crimes as murder or rape cannot qualify for an exemption, Social Services may consider individuals who have committed other crimes, even felonies like spousal battery and assault with a deadly weapon.

In early 2000 Social Services concluded that its exemption procedures were inadequate and its staff may have too much latitude in granting exemptions. Our review of 25 exemptions confirmed that its own policies contributed to poor decision making because Social Services:

- Allowed staff to grant exemptions with little or no management oversight.
- Did not sufficiently consider information other than conviction data or deem important an applicant's lack of honesty in filing for an exemption, before an exemption was granted.

We recommended that the Legislature determine whether Social Services' current level of discretion to exempt individuals with criminal histories is appropriate, consider pursuing laws that

automatically deny an exemption on a greater range of crimes, and consider expanding the variety of serious arrests Social Services may review during its exemption process.

We also recommended that Social Services continue following its new management review procedures of criminal exemptions involving felonies but also require management to periodically review and approve a representative sample of all other exemptions granted. Finally, Social Services should actively consider all available information, not just “rap sheets” when granting exemptions.

Legislative Action: Partial corrective action taken.

In September 2000, the governor signed Senate Bill 1992 (Chapter 819, Statutes of 2000). This bill, among other things, expanded the list of crimes for which Social Services cannot grant an exemption and added crimes to the serious arrest list.

Department Action: Corrective action taken.

In its final response to our audit recommendations, Social Services indicated that it continues to require supervisory review of all felony exemption cases. In addition, its supervisors are reviewing 10 percent of all other exemption requests. Finally, staff are actively considering all available information, not just rap sheets when deciding on an exemption request.

Finding #2: Social Services’ criminal history checks are slow, sometimes incomplete, and its FBI background check procedures are questionable.

Social Services has some fixed timelines for processing criminal history exemptions; however, it is not always able to work within these timelines. Municipal agencies, such as courts and local law enforcement, contribute to Social Services’ criminal history-exemption process but do not always provide information in a timely manner or may report incomplete criminal history data. Because access to licensed child care facilities pending a criminal history review differs between license holders (licensees) and facility employees, when Social Services delays granting an exemption it may impede a person’s right to work or put children in the care of people who pose a threat to their safety.

We recommended that Social Services establish and meet its goal for notifying individuals that an exemption is needed, develop safeguards to help ensure that municipal agencies provide information promptly, and use its tracking system to identify cases that are not progressing to a reasonable, timely conclusion.

Department Action: Partial corrective action taken.

Social Services reported that it began piloting an automated case-management system in December 2000 to assist staff in tracking all background check activities. Tracking includes generating a notice to be mailed to individuals for whom a criminal history exemption is needed, and a tickler component reminding staff when certain documents or actions are due. Social Services stated that the system is ‘on schedule,’ but did not indicate an operational date.

Social Services stated that as it has no jurisdiction over municipal agencies, changes would require legislative action—and recent legislation did not pass. Nonetheless, our recommendation is still appropriate because Social Services could take steps to change its own processes to help ensure that municipal agencies are responsive to its requests for data.

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 Social Services conducts an FBI check. For 9 of 11 individuals we reviewed, Social Services licensed or allowed them to operate, work in, or live in child care facilities without FBI checks even though these individuals disclosed criminal convictions. Social Services’ interpretation of the law is to allow people who disclose criminal convictions to begin caring for children before going through the mandatory FBI check. Our interpretation differed as we believe the law means that Social Services cannot authorize any individual who discloses criminal convictions to begin caring for children until an FBI check is complete. Social Services’ actions could leave children in the hands of individuals whose criminal histories make them unfit to supervise children.

According to the deputy director for the Community Care Licensing Division, Social Services does not believe the Legislature intended to delay licensure or employment pending individuals’ FBI checks. And, Social Services contends that although designed as an additional safeguard, the FBI checks have not proved more accurate or up-to-date than information the Department of Justice (Justice)

provides through its records review. Nevertheless, we believe that children are best protected when Social Services conducts FBI checks on individuals before they come in contact with children.

We recommended that the Legislature clarify the existing FBI check requirements to specify whether an individual can have contact with children pending an FBI check.

We also recommended that Social Services, to implement the FBI record-checking requirement in accordance with the law, reevaluate its current FBI records review policies and procedures and properly apply the requirements that allow individuals to work with or be in close proximity to children while their FBI check is pending.

Legislative Action: Unknown.

We are unaware of any legislative action taken to implement these recommendations.

Department Action: Corrective action taken.

With regard to FBI checks, Social Services noted that it reviewed its processes and found them to be in accordance with the law and legislative intent. In its final response to our audit recommendations, Social Services stated that in April 2001 Justice began sending FBI check information to Social Services electronically. Social Services previously stated that it hoped electronic submission of these records would further improve the accuracy and responsiveness of the process.

Finding #3: Justice’s process for reporting subsequent criminal activity is flawed.

For four of nine cases we reviewed, Justice failed to notify Social Services when an individual it previously approved for access to a child care facility was convicted of a crime or arrested for certain statutorily defined crimes. Justice’s lack of a method for tracking new arrest and conviction information contributed to its failure to notify Social Services as required. As a result, Social Services cannot monitor individuals who continue criminal activity after their criminal histories are initially reviewed and cleared, which may compromise the safety of children in care.

We recommended that Justice establish a system to track notices sent to Social Services about individuals previously granted access to child care facilities who commit additional crimes.

Department Action: Partial corrective action taken.

In the short run, Justice stated that by December 2001 it will modify the work area to enable staff to work and track in chronological order individuals previously granted access to child care facilities who commit additional crimes. In addition, in November 2001, Justice added an evening shift to its Record Information and Services Program to process subsequent arrest information. In the long run, Justice is redesigning its Automated Criminal History System so it can process subsequent arrest notifications electronically. Justice indicated the target date is July 2003.

Finding #4: Parents lack information about caregivers' criminal history exemptions.

Neither Social Services nor the caregiver are required to disclose to parents crimes the caregiver committed or that Social Services has granted a criminal history exemption. State law prohibits Social Services from disclosing the contents of an individual's rap sheet; however, during the audit Social Services acknowledged it could disclose to the public its exemption decisions and to whom exemptions were granted. However, Social Services has never directed licensees to disclose criminal history exemptions, believing that doing so may expose both it and the caregiver to legal liability. Until Social Services ensures that disclosures are made, parents will not receive critical information they need to make informed child care choices.

We recommended that Social Services, working with the Legislature, require disclosure of criminal history exemptions. Further, the two parties 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.

Legislative Action: Unknown.

The Legislature passed Assembly Bill 2431 in August 2000, which would have added Health and Safety Code Section 1596.8775, allowing the public to view documents Social Services sent to a licensee regarding criminal background check exemptions. However, the governor vetoed this legislation and we are unaware of any subsequent legislative action.

Department Action: Partial corrective action taken.

Social Services reported that, along with Justice, it studied California law and determined that making criminal history exemptions public information would violate an individual's right to privacy. Social Services is currently litigating a Public Records Act request regarding past criminal history exemptions it has granted. The lower court upheld Social Services' decision; however, an appeal is pending and that decision will provide further direction in this area.

Finding #5: Social Services has been lax in ensuring complaints against child care facilities are corrected and that required periodic monitoring is performed.

Although Social Services appears to effectively investigate complaints it receives regarding child care facilities, it does not consistently pursue substantiated complaints to ensure that problems are corrected. For 14 substantiated complaints we reviewed, in almost 40 percent of these cases, Social Services could not demonstrate that the problem at the facility was corrected. Because Social Services does not always perform the necessary follow-up procedures on substantiated complaints, it cannot guarantee that child care facility licensees comply with the laws and regulations and provide safe and healthy environments for children.

Social Services also 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. Of 91 evaluations (46 child care centers and 45 child care homes) we reviewed, Social Services failed to perform 21 of them on time—6 of the 21 were performed more than seven months late. Evaluations that are significantly late prohibit Social Services from ensuring that licensees are operating properly and caring for the children entrusted to them.

We recommended that Social Services:

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

Department Action: Partial corrective action taken.

In its final response to us in August 2001, Social Services stated that a work group was drafting changes to an existing supervisory handbook. The handbook was expected to have been finalized by December 2001. Social Services is also planning a training program that will focus on more effectively managing and monitoring field staff activities. Social Services planned to provide the training in early 2002.

Regarding facilities evaluations, Social Services reported it has modified its tracking system to display facility visit histories to more accurately track due and overdue visits. However, Social Services believes staff vacancies and workload increases affect its ability to complete prompt evaluations.

Finding #6: Social Services' oversight of its staff and district operations is insufficient, and it does not consistently monitor county licensing functions.

Other than overseeing new analysts for the first three to six months on the job, Social Services lacked a systematic process for supervisors to ensure that analysts continually make sound decisions and appropriately enforce licensing regulations. Consequently, Social Services has little assurance that analysts are effectively administering the child care facility licensing program.

We recommended that Social Services:

- Establish standards requiring district offices to periodically review evaluation reports analysts prepare.
- Make certain that each district office is scheduling and performing its quality-enhancement process evaluations as required.

Department Action: Corrective action taken.

Social Services reported that it is requiring the district offices to submit to their regional office an annual report of all completed quality-enhancement process evaluations. The district offices are to provide a justification in the reports if evaluations are not completed or are delayed. Social Services believes this will serve to address or eliminate the findings regarding insufficient staff oversight.

Social Services' regional offices are responsible for monitoring district office operations. However, Social Services has failed to establish policies and procedures or standards to direct its regional offices in their oversight role. As a result, the regional offices do not effectively or consistently monitor the district offices' licensing activities, and Social Services cannot ensure that its licensing activities are conducted in accordance with state laws and regulations.

We recommended that Social Services establish policies and procedures to ensure that regional offices periodically and consistently assess district offices' operations.

Department Action: Partial corrective action taken.

Social Services is awaiting approval for a divisionwide reorganization and hopes to create a quality control unit that will help ensure regional offices periodically and consistently assess district offices' operations. Additionally, in December 2001, the department expected to begin piloting a systems review program designed to evaluate district office operations. Upon completing the pilot, Social Services anticipated conducting statewide periodic district office reviews. However, Social Services did not indicate a time frame for completing the pilot and full program implementation.

Social Services contracts with 10 counties, allowing them to license and monitor child care homes; 9 of these counties are within its northern region. As outlined in its agreements with the counties, Social Services is responsible for inspecting, reviewing, and monitoring each county's activities. However, over an eight-year period from 1991 to 1999, the northern region reviewed only 3 of 9 county licensing programs under its direct supervision. Because Social Services 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.

We recommended that Social Services develop and maintain a schedule to periodically review each county's child care facility licensing operations.

Department Action: Corrective action taken.

Social Services reported in its final response to our audit recommendations that it had developed a schedule to periodically review each of the 10 counties authorized to perform child care licensing functions and had visited those scheduled. It further stated it will make visits more often if necessary, and follow-up visits will be made to ensure the counties correct any deficiencies.

Finding #7: Social Services should take further steps to process legal actions more quickly.

In April 1998 Social Services set a goal of six months for filing pleadings for all cases received. For 33 cases reviewed that were filed after April 1998, only 3 cases took more than six months to file the pleadings, most took less than four months. Although our report acknowledged that the most serious cases should be processed first—which is what Social Services reports that it attempts to do—we question whether the six-month goal for filing cases is short enough. Social Services takes disciplinary action against a licensee who is not appropriately caring for children; a six-month goal for taking action seems imprudent, especially when children are left in the licensee’s care pending the outcome of the disciplinary process.

We recommended that Social Services reassess its goal of filing a case pleading within six months of receiving a request for legal action and strive to shorten it. Once it sets a more appropriate time goal for processing legal actions, it should ensure that its processing goals for legal cases are met.

Department Action: Partial corrective action taken.

Social Services states that the most serious cases are filed first and that procedures exist for expedited pleadings when requested by district office staff. Further, it believes its ability to meet a shorter turnaround period for filing case pleadings is constrained by the increased numbers of administrative actions requested. However, Social Services reports that it recently hired 10 additional legal staff and reorganized its enforcement unit, which will ensure legal case processing goals are met.

Finding #8: Social Services' enforcement of legal actions is weak.

Social Services does not always consistently and diligently enforce decisions regarding license revocation and individual exclusions by appropriately following up to ensure the child care facility is closed or the excluded individual is barred from the facility. In addition, it does not effectively ensure that all licensees on probation comply with the settlement terms. These weaknesses are due primarily to Social Services' failure to provide adequate guidance to district offices, which are responsible for enforcing legal decisions. As a result, Social Services does not always make certain that serious and potentially dangerous conditions in child care facilities are remedied.

We recommended that Social Services establish policies to guide district offices on:

- Enforcing all license revocations and facility exclusion decisions promptly, effectively, and consistently.
- Creating formal plans to monitor licensees placed on probation as a result of legal actions.

Department Action: Corrective action taken.

Social Services reported that in February 2001 it distributed to staff revised procedures for facility closures and following up to verify that an individual excluded from a facility is not present. At the same time, Social Services provided staff with policies and procedures to use in monitoring probationary facilities.