

## California Department of Social Services

Its Caregiver Background Check Bureau Lacks Criminal History Information It Needs to Protect Vulnerable Populations in Licensed Care Facilities

Report 2016-126

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March 14, 2017

2016-126

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 California State Auditor presents this audit report concerning the timeliness and quality of the California Department of Social Services' (Social Services) background check process for individuals who have contact with clients of facilities it licenses (licensed facility). We also assessed whether the California Department of Justice (Justice) was sending all of the necessary and appropriate criminal history information to Social Services for the background checks.

This report concludes that Social Services does not receive all of the information it needs to protect vulnerable clients. For example, in 2016 Justice stopped sharing sentencing information with Social Services because Justice determined that state law does not explicitly require it to share the information. In addition, Social Services and four other state departments within the California Health and Human Services Agency do not effectively or promptly share information with one another about the administrative actions they each take against individuals although state law intends for them to do so. Therefore, these five departments do not have access to information that could help them protect vulnerable populations.

We also found that Social Services does not review all required information before it issues an exemption that allows an individual to be present in a licensed facility. This includes convictions for relatively minor crimes known as infractions and individuals' self-disclosed convictions, which both would help Social Services better assess the risk individuals may pose to clients in its facilities. In addition, in 17 of the 18 background check cases we reviewed, Social Services did not consider all required information when it made exemption decisions and therefore its decisions could be questioned. Further, state law allows Social Services to grant exemptions for convictions of eight crimes that are similar in nature to other crimes that are nonexemptible. As a result, from fiscal year 2013–14 through 2015–16, Social Services allowed more than 40 individuals with arrests or convictions for these crimes to be present in licensed facilities.

Finally, we found that delays at Justice and Social Services extend the amount of time it takes Social Services to issue exemption decisions. Our review shows that Justice does not always provide Social Services with criminal history information within the 14-day time frame required by law. Social Services also had significant delays when processing exemptions, as well as when conducting investigations of individuals who have been arrested for certain crimes, and pursuing legal actions against individuals. Once it finalizes a decision that excludes an individual from a licensed facility, Social Services does not always conduct a site visit to verify that excluded individuals have left the facility.

We make a number of recommendations to the Legislature that we believe would improve the background check process, including amending state law to require Justice to send Social Services all necessary information for making exemption decisions and designating eight additional crimes as nonexemptible. We also recommend Social Services develop and monitor against time frame processing goals for conducting its background check reviews and taking legal actions against individuals.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## SUMMARY

The California Department of Social Services (Social Services) is responsible for protecting the health and safety of vulnerable populations—such as children, adults, and seniors—in the care facilities it licenses (licensed facilities). Its Caregiver Background Check Bureau (CBCB) is responsible for evaluating the character of individuals with criminal records who apply to have access to a licensed facility, such as employees or volunteers. To decide whether it will grant an individual an exemption that will allow him or her to be present in a facility, the CBCB receives criminal history information from the California Department of Justice (Justice) as well as other information related to the individual's character. For this audit, we reviewed how well Social Services and Justice fulfill their roles in the background check process. This report draws the following conclusions:

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**Justice and other state departments do not send Social Services certain information it needs to protect vulnerable clients.**

In 2016 Justice stopped providing Social Services sentencing information because state law does not explicitly require that it share this information. It also did not forward information about certain convictions because it believed it was not authorized to share that information. However, this information is valuable for Social Services in deciding whether to allow an individual with a criminal history to be present in a licensed facility, known as an exemption decision. In addition, Social Services and four other state departments do not promptly share information with one another about the administrative actions they take against individuals. This is, in part, because their interagency agreements lack specificity about when to share this information. As a result, Social Services cannot be assured that it receives the information it needs to protect vulnerable populations. Further, Social Services was not always timely in evaluating whether an individual who received an administrative action from another department should be allowed to remain present in a facility Social Services licenses.

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**Social Services does not always obtain or review all appropriate information before allowing individuals access to facilities.**

Social Services' policies inappropriately direct staff to ignore convictions for relatively minor crimes known as infractions and assume that, if Social Services does not have an individual's criminal

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history self-disclosure form, then the individual does not have any convictions. These practices result in Social Services allowing individuals with unreviewed criminal histories to be present in licensed facilities. In addition, we reviewed 18 background check case records and found that in 17 of these cases the CBCB's staff did not consider all required information when they granted or denied exemptions. Further, we believe Social Services could better protect clients in licensed facilities if the Legislature amended state law to add additional crimes to the current list of crimes for which Social Services cannot issue an individual an exemption to be present in a facility (nonexemptible crimes).

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### **Delays at Justice and Social Services prolong the time it takes to issue exemption decisions.**

Justice does not always provide Social Services with criminal history information within the 14-day time frame required by state law. Further, Justice has incomplete criminal history information because it is not receiving all arrest and conviction information from the courts and law enforcement agencies. As a result, Social Services' background checks can be delayed or may not consider an individual's complete criminal history. In addition, we found that Social Services had significant delays—some of which are within its control—when processing exemptions, conducting investigations of individuals who have been arrested but not convicted (arrest-only cases), and pursuing legal actions against individuals. Such delays could potentially subject individuals who are not a risk to the health and safety of vulnerable populations to unreasonable delays before beginning employment. Finally, Social Services has not developed a consistent approach to verifying that individuals it determined were a risk to vulnerable populations have left licensed facilities. Therefore, in four of the six immediate exclusion cases we reviewed, Social Services did not conduct a site visit to determine whether the individual had actually left the facility.

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## Summary of Recommendations

### *Legislature*

The Legislature should amend state law to require Justice to send Social Services all necessary information for making exemption decisions. It should also expand the list of crimes that are considered nonexemptible and require that Social Services wait for California and out-of-state criminal histories before granting an individual access to a licensed facility. Finally, it should require Social Services and the four other departments it has interagency agreements with to provide each other information about administrative actions they take against individuals.

### *Justice*

By July 2017, Justice should analyze and implement changes to its process to ensure that it sends Social Services criminal history information within the 14-day time frame required by state law.

### *Social Services*

Social Services should amend the interagency agreements it has with other state departments to specify that the departments should share their administrative action information as soon as possible after the action is final but no more than five business days after the end of the month in which the action became final. Social Services should begin amending its interagency agreements by July 2017. It should also establish time frames for staff to evaluate individuals with administrative actions from other departments and monitor itself against those expectations.

Social Services should immediately require its exemption analysts to evaluate all infraction convictions, other than minor traffic violations, before granting exemptions to individuals and should obtain copies of all criminal history self-disclosure forms.

The CBCB should immediately ensure that its background check case files support its exemption decisions by including complete decision summaries and all required supporting documents.

By July 2017, Social Services should develop goals for how quickly its staff should process exemption requests and pursue legal actions, and it should monitor itself against these goals. Further, it should immediately follow its arrest-only policies and monitor against the associated time frames. In addition, it should revise its policy to

require that staff perform site visits to the licensed facilities after Social Services issues an exclusion order and verify that the new policy is followed.

### **Agency Comments**

Social Services and Justice generally agreed with our recommendations. However, Social Services disagreed with our recommendation that it should review all infraction convictions, other than minor traffic violations, as it is required to do by state law. Social Services stated that it was neither feasible nor effective to do so. Justice did not indicate whether it agreed with our recommendation to consider trends in the number of arrest reports each law enforcement agency sends it and to request agencies forward all required arrest information. Instead, Justice asserted that it is not currently charged with enforcing reporting requirements and it does not have the resources to ensure timely reporting of the required information.

# INTRODUCTION

## Background

Social Services, through its Community Care Licensing Division (Licensing Division), is responsible for regulating the care facilities it licenses and protecting the health and safety of children, adults, and seniors in those facilities. The Licensing Division licenses and oversees more than 70,000 community care facilities—including child care facilities, foster family homes, and care facilities for the elderly—throughout California. To protect these vulnerable populations, state law requires all applicants, licensees, adult residents, volunteers under certain conditions, and employees of licensed facilities who have contact with clients to obtain a background check.<sup>1</sup> Social Services uses these background checks to determine whether individuals should be allowed to be present in a licensed facility. The CBCB conducts these background checks on behalf of the Licensing Division.

To determine whether an individual should be permitted to be present in a licensed facility, the CBCB reviews the individual’s criminal history. At a minimum, the criminal history check includes a review of the individual’s record of arrests and prosecutions (RAP sheet). Figure 1 on the following page presents the main sources of the information the CBCB receives. In fiscal year 2015–16, Justice sent the CBCB more than 366,000 background check responses to its criminal history inquiries. More than 23,000 of these inquiries—approximately 6 percent—resulted in criminal histories that the CBCB needed to evaluate.

## Exemption Process for New Applicants

For an individual to be present in a licensed facility, state law requires the individual to obtain a criminal record clearance or an exemption. The text box presents the difference between a clearance and an exemption

### Definitions of the terms *clearance* and *exemption* with regard to individuals present in a licensed facility:

#### Clearance:

- Social Services issues clearances to individuals with no convictions other than minor traffic violations. Because these individuals do not have a record of arrests or convictions, the CBCB grants the individual permission to be present in a licensed facility.
- Social Services can issue a clearance to individuals whose criminal history includes certain arrests specified in state law as long as Social Services has investigated the arrests and determined that the individual does not pose a risk to the health or safety of a licensed facility’s clients.
- Social Services also grants clearances to individuals if the individuals’ criminal histories include only arrests that are not specified in state law as those requiring an investigation.

#### Exemption:

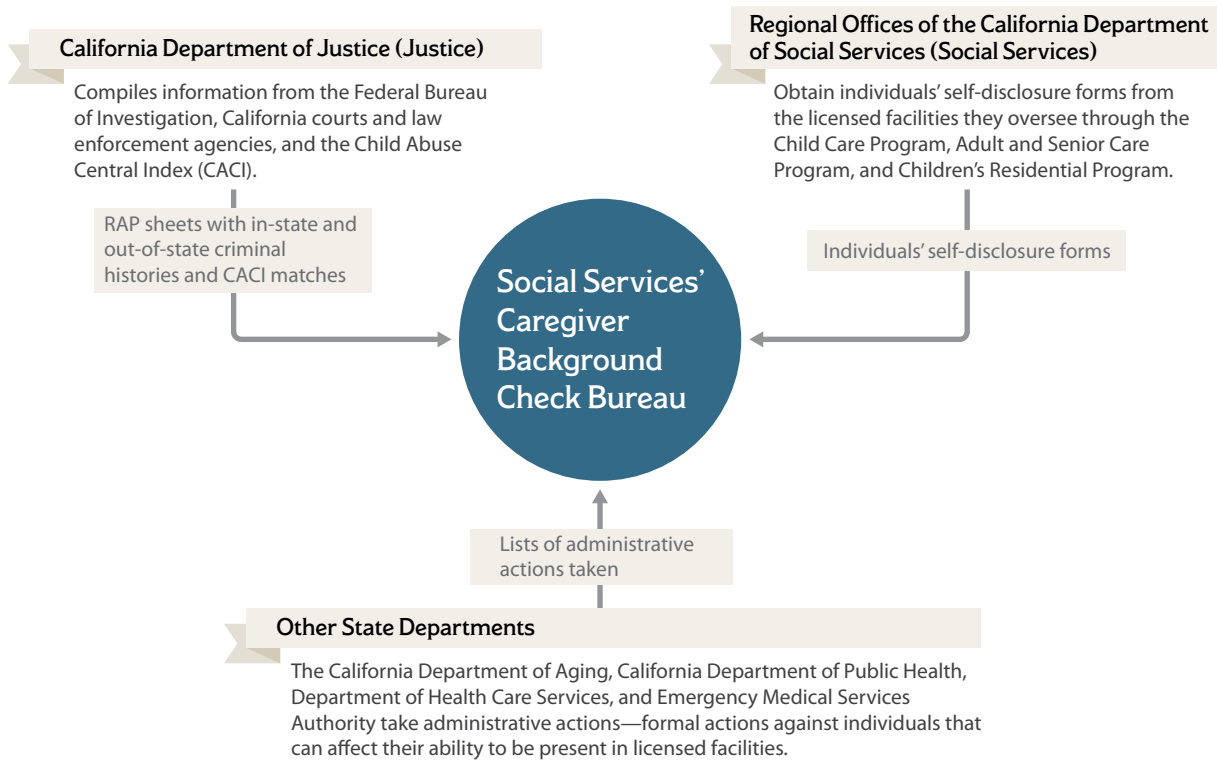
An individual who has been convicted of a crime other than a minor traffic violation must receive an exemption in order to be present in a licensed facility. The CBCB reviews the individual’s convictions and grants an exemption if it determines that the individual is of good character and is not a threat to the well-being of clients.

Sources: Health and Safety Code section 1522, Social Services’ *Evaluator Manual*, and Social Services’ arrest-only procedures.

<sup>1</sup> State law requires that any individual who seeks to be present in a licensed facility, other than a client of a facility, shall receive a criminal record clearance or exemption. Therefore, for the purposes of this audit report, the discussion of the background check process allowing individuals to be present in licensed facilities does not apply to clients.

from Social Services. To receive permission to be present in a licensed facility, an individual must first submit his or her fingerprints to Justice. Justice then processes the fingerprints and either notifies Social Services that the individual has no history of arrests and convictions or sends the CBCB the individual's criminal history, known as a RAP sheet. State law prescribes the type of criminal history information that Justice is allowed to share with the CBCB. If an individual's RAP sheet contains information Justice is not explicitly allowed by state law to share, such as sentencing information, Justice removes this information from the RAP sheet before sending it to the CBCB.

**Figure 1**  
**Sources of Criminal History Information Received by the Caregiver Background Check Bureau**



Sources: California State Auditor's analysis of the Penal Code sections 11105 and 11105.2, Health and Safety Code section 1522.08, interagency agreements between Social Services and various departments, Justice's website, interviews with Justice's staff, examples of information forwarded by Justice to Social Services, and Social Services' and Justice's policies.

The CBCB reviews the RAP sheet to determine whether state law prohibits the individual from having contact with licensed facility clients. To safeguard clients' health and safety, state law prohibits anyone with a criminal conviction for any crime—other than a minor traffic violation—from caring for or living with clients in a licensed facility. (We discuss the process for individuals who have RAP sheets that identify that they have been arrested but do not have an

associated conviction, referred to as *arrest-only cases*, in a later section.) However, state law gives Social Services the authority to grant an individual an exemption to this prohibition if it determines that the individual is of good character and therefore not a health and safety risk to vulnerable populations. Social Services cannot exempt individuals who have been convicted of certain crimes, such as kidnapping or murder. Figure 2 on the following page shows the CBCB's exemption process for individuals who have RAP sheets with convictions.<sup>2</sup> If an individual's RAP sheet includes a conviction for which Social Services can grant an exemption, the CBCB notifies the individual, as well as the facility that the individual is attempting to be present in, that an exemption is needed. The individual is prohibited from being present in a licensed facility until the CBCB grants him or her an exemption. To obtain an exemption, either the facility or the individual must submit an exemption request to the CBCB.

The CBCB uses the documents it asks the facility or individual to submit with the exemption request to assess whether the individual poses a risk to clients. The text box lists the required documents and some of the elements the CBCB directs its exemption analysts to consider as part of the exemption review. When reviewing an exemption request, the CBCB considers information such as the nature and number of convictions the individual has, the length of time between the end of an individual's incarceration or probation and the exemption request, and signs of rehabilitation and remorse. The CBCB's procedures state that an exemption may be granted if the individual has presented substantial and convincing evidence that he or she is of good character and is not a threat to the well being of clients. However, if the CBCB determines that the individual has not presented sufficient evidence that demonstrates he or she poses no threat to clients' safety, the CBCB can deny an exemption or impose conditions on that individual's presence or role at the licensed facility.

### Documents Required for an Exemption Review

The CBCB requires individuals or facilities to submit the following documents when seeking an exemption:

- Written request for an exemption.
- Detailed description of what the individual will be doing at the facility.
- Signed copy of a self-disclosure form identifying prior convictions.
- Signed statement from the individual describing the events surrounding each conviction.
- Documentation, such as court documents, indicating that the individual's last period of probation was unsupervised, or that supervised probation was successfully completed.
- Verification of any training, classes, courses, treatment, or counseling the individual completed.
- Three signed character references.
- Copies of all law enforcement reports related to the individual's convictions or a letter from law enforcement stating the reports do not exist.
- Current mailing address and telephone number for the individual.

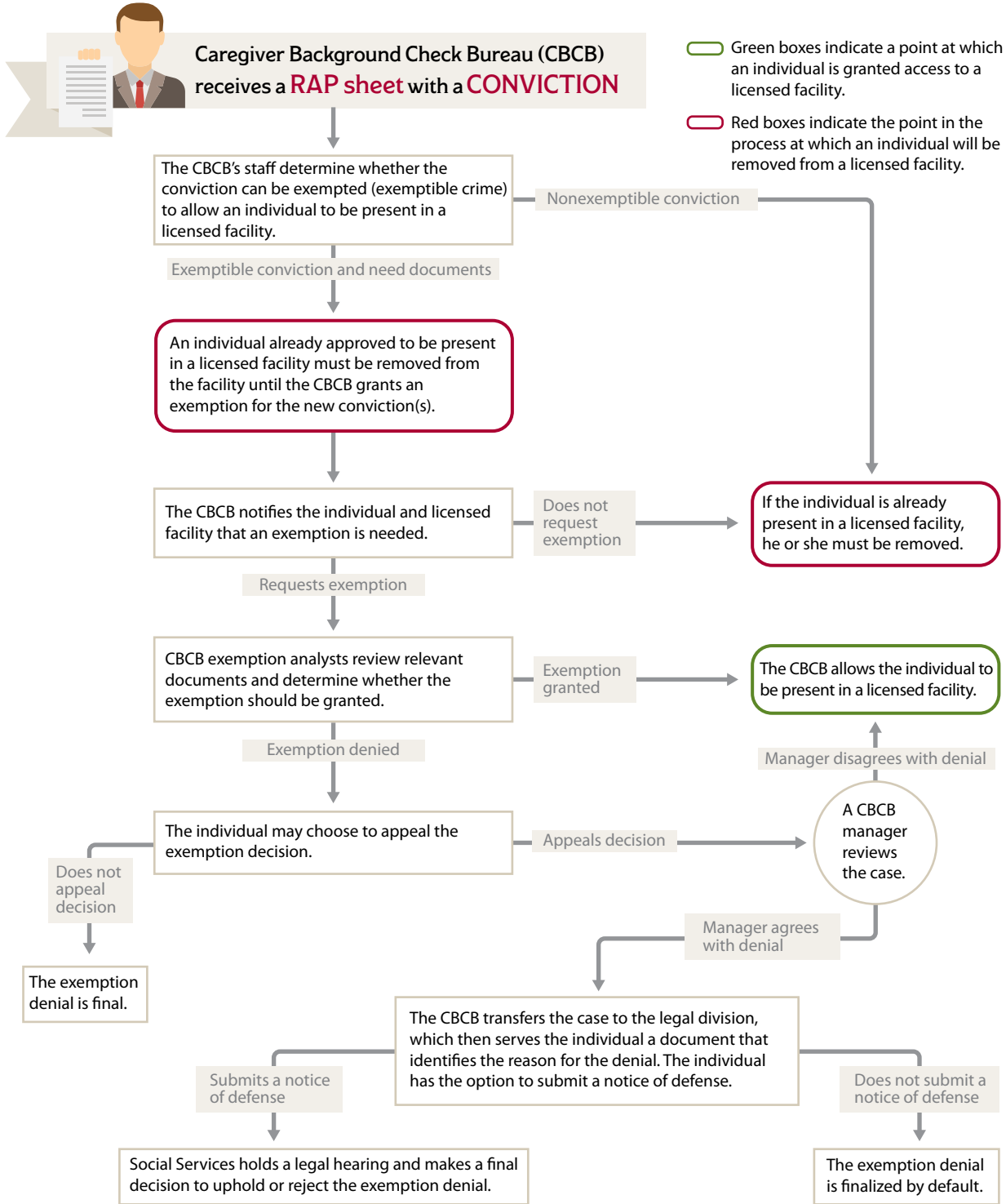
Social Services directs its exemption analysts to also consider the following:

- Fine or restitution payments.
- Pattern of criminal behavior.
- Vulnerability of the victim (such as a child, disabled, or elderly victim).
- Honesty of the individual's description of the circumstances of the crime.

Sources: *Social Services' Evaluator Manual* and background check training materials.

<sup>2</sup> In our report, we use the term *exemption* to refer to Social Services' standard exemptions. Social Services also processes simplified exemptions, for which it does not request additional documents; we discuss these briefly in our report, but they were not the main focus of our review.

**Figure 2**  
Overview of the Exemption Decision Process for Individuals Who Have RAP Sheets With Convictions



Sources: Social Services' policies, process documents, and interviews with Social Services' staff.

## Exemption Process for Subsequent Convictions

An individual who has been granted a clearance or an exemption is permitted to be present in a licensed facility as long as he or she continues to pose no risk to clients. State law specifies that when an individual has an arrest or conviction that occurs after he or she is associated with a licensed facility, Justice may provide a subsequent criminal history (subsequent RAP sheet) to Social Services. Justice is allowed by state law to forward subsequent criminal history information until Social Services notifies Justice that it is no longer interested in receiving criminal history information for this individual. Social Services generally notifies Justice that it is no longer interested in receiving criminal history information for an individual that has not associated with a licensed facility for three years.

When the CBCB receives a subsequent RAP sheet or information about an administrative action from another state entity, its exemption analysts make a new determination about whether the individual poses a risk to the licensed facility's clients. An administrative action is a formal action against an individual, such as a suspension or revocation of a license. Social Services can, after reviewing the other entity's administrative action case files, determine that the individual poses a risk to a licensed facility's clients and remove the individual from its licensed facilities. As previously shown in Figure 2, Social Services requires an individual to be removed from a facility until it makes a new exemption determination. In addition, the red boxes in Figure 2 identify the points in the process where the CBCB can rescind an individual's exemption or clearance and require the individual to be removed from the facility, based on a subsequent RAP sheet. If a subsequent RAP sheet contains a conviction the CBCB cannot exempt, the CBCB notifies the licensed facility that the individual may no longer work or reside in the facility.

## Clearance Process for Arrest-Only Cases

If an individual's RAP sheet identifies an arrest-only, without a conviction, Social Services can grant the individual a clearance to work in a facility. Assembly Bill 2632 (AB 2632), which became Chapter 824, Statutes of 2014, changed the law effective January 2015 to require Social Services to investigate arrests for specific crimes (referable arrests) before deciding whether to grant or deny a clearance. Before January 2015, state law required Social Services to investigate arrest-only cases only if it was denying a clearance or revoking a license for an individual already granted access to a licensed facility. As a result, the CBCB was allowed to issue clearances to initial applicants whose criminal histories contained only arrests without Social Services having completed

an investigation into the nature of the arrests. In addition, since AB 2632 amended state law, the CBCB has implemented a practice of not investigating arrests, and thus not issuing clearances, for initial applicants who are still awaiting trial. The CBCB closes such cases because there may be an active criminal case and an investigation by Social Services could negatively affect the criminal case. If the CBCB receives a subsequent RAP sheet with a referable arrest for an individual who is present in a licensed facility, after an evaluation of the readily available evidence Social Services can decide to issue a clearance to the individual, refer the case for additional investigation, or deny the individual the ability to be present in a licensed facility. If Social Services decides to deny the individual the ability to be present in a facility, it can choose to issue either a nonimmediate exclusion or, if it determines that the individual poses a threat to clients in a facility, an immediate exclusion.



# Justice and Other State Departments Do Not Send Social Services Certain Information It Needs to Protect Vulnerable Clients

## Key Points

- In early 2016, Justice stopped forwarding sentencing information to Social Services because it determined that it was not explicitly allowed by state law to provide this element of an individual’s criminal history. It also did not forward information about certain convictions because it believed it was not authorized to share that information. As a result, Social Services does not receive information that is valuable to the analysts in the CBCB who make exemption decisions.
- Although a change to state law in 2013 allows Justice to provide entities with subsequent criminal history information from the Federal Bureau of Investigation (FBI), Justice has not begun to develop the framework to receive this information. This means that Social Services—and other entities in California that rely on this information—are not aware of critical criminal history information.
- Social Services and four other state departments are not effectively sharing information about administrative actions they take against individuals, although state law intends for them to do so. Therefore, these five departments do not have access to information that could help them protect vulnerable populations. In addition, Social Services is not always timely in evaluating whether an individual who has been subject to an administrative action should be allowed to remain present in a licensed facility.

### Justice Is Not Forwarding All Critical Information to Social Services

State law prescribes what criminal history information Justice can provide to Social Services, as summarized in the text box. In early 2016, Justice stopped its practice of providing sentencing information to Social Services. The director of Justice’s Information Services Division (information services director) indicated that

#### Statutory Requirements Justice Uses to Determine What Criminal History Information to Send Social Services

##### Initial Background Checks

Justice shall provide the following:

- Every conviction.
- Every arrest for which the individual is awaiting trial.
- Every arrest for crimes specified in the Health and Safety Code section 1522(a)(1), which includes murder, elder abuse, and assault. If Justice does not have records of a disposition for the arrest, it must make a genuine effort to determine the disposition.
- Sex offender registration status.

Justice shall not disseminate the following:

Any arrest subsequently deemed a detention only or that resulted in the successful completion of a diversion program or exoneration.

##### Subsequent Criminal History

For criminal activity that occurs after an individual has been fingerprinted and he or she has access to a licensed facility, Justice may disseminate the following:

- Every arrest.
- Every disposition that results in a conviction.
- Dispositions that do not result in a conviction, only if Justice has already received notification of the arrest and has previously notified Social Services of the pending status of the related arrest.

Sources: Penal Code sections 11105(m) and 11105.2(a).

Justice stopped providing sentencing information to entities in California because it determined that state law does not provide for disseminating sentencing information. He stated that Justice routinely monitors its work processes and, in one such review, discovered that it was disseminating sentencing information. According to the information services director, Justice regarded this dissemination as an error because it violated statutory criteria, and Justice immediately corrected the error.

However, Justice's removal of all sentencing information has negatively affected the CBCB's ability to make informed exemption decisions regarding individuals whom the CBCB is evaluating for the first time. Although state law does not require Justice to send sentencing information, and it is permissible for Justice to remove sentencing information, state regulations related to granting exemptions require Social Services to consider whether an individual is on probation or parole, as well as the amount of time that has passed since the end of parole, probation, or incarceration, which are aspects of sentencing information. Because Justice began removing sentencing information from Social Services' RAP sheets, the CBCB's exemption analysts cannot easily determine whether these important time frames have been met.

Further, according to the chief of the CBCB, in 2016 Justice began removing some arrest information from the RAP sheets it sends to Social Services. State law identifies specific charges for which arrest information must be disseminated; arrests for any other charge are known as nonreferable arrests. According to the chief of the CBCB, Justice began removing some nonreferable arrests from RAP sheets when there was an associated conviction. We also observed this occurring on one of the federal RAP sheets we reviewed during our audit. When we questioned Justice officials about the removal of arrest information, an assistant bureau chief within the Bureau of Criminal Information and Analysis (assistant bureau chief) stated that nonreferable arrests should be disseminated when there is a corresponding conviction, that the removal of any such arrests was an error, and that procedures will be updated to reflect that staff should disseminate arrests in these circumstances.

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**In 2016 Justice began removing some arrest information from the RAP sheets it sends to Social Services.**

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When Justice does not provide nonreferable arrest information with the accompanying conviction, the CBCB cannot determine whether the conviction was for a lesser charge than the arrest. This can occur as the result of the defendant pleading guilty to a lesser charge in plea bargaining.

This lack of information prevents the CBCB exemption analysts from evaluating whether a conviction involved plea bargaining, which can affect the type of information Social Services requires to process an exemption.

Our testing also found that Justice is omitting juvenile criminal information from RAP sheets it sends Social Services, which is information that Social Services used to receive. The assistant chief of the CBCB stated that the CBCB had previously received juvenile criminal information, but that it stopped receiving this information approximately five years ago. Justice's assistant bureau chief stated that Justice had determined that none of the sections of state law pertaining to dissemination permit the disclosure of juvenile criminal justice information. Additionally, she stated that juvenile criminal information involves what are known as sustained petitions, which are not equivalent to convictions against adults. Although an individual's juvenile criminal history is generally considered separate from his or her adult criminal record, courts can already consider some serious juvenile offenses, such as serious and violent felonies, when making sentencing decisions related to adult convictions. If Social Services received this type of information from Justice, it would likely enhance the quality of Social Services' criminal history reviews.

During our review of files for this audit, we identified an exemption case in which Justice omitted juvenile criminal information that contained a serious offense. In this case, the individual was found to have committed assault with intent to murder as a minor. Following its practice of omitting juvenile information, Justice did not include the charge on the RAP sheet it sent to Social Services. Instead, the individual submitted a criminal history self-disclosure form to the CBCB that included the juvenile offense, and the CBCB was able to use the juvenile charge as additional support in denying the individual's exemption. However, the CBCB cannot rely on individuals to voluntarily alert them to serious offenses that have been removed from their RAP sheets.

We also found multiple instances in which Justice did not provide Social Services with subsequent RAP sheets for criminal history occurring in California for individuals the CBCB had already authorized to be present with vulnerable populations. Specifically, through our review of 10 individuals who had received an administrative action from other state departments, we identified six instances of convictions occurring in 2014 and 2015 in which Justice did not notify the CBCB about a subsequent conviction. Instead, Social Services learned of these convictions as a result of administrative action information that other departments shared with it. On average, the time between when Justice learned of these convictions and when the respective department notified Social Services of the related administrative action was 181 days. Two of these individuals were convicted of nonexemptible crimes—one for child abuse and the

other for inflicting pain on an elderly or dependent adult. This conviction information is essential to help protect vulnerable populations in Social Services' licensed facilities.

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**We identified six instances of convictions occurring in 2014 and 2015 in which Justice did not notify the CBCB about a subsequent conviction.**

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According to the manager of its applicant response unit, Justice did not forward five of the six convictions to Social Services because Social Services did not receive the arrest information related to these convictions, and Justice is not authorized to share subsequent conviction information if the arrest information was not originally shared with Social Services. In contrast, for the sixth conviction, Justice reported the arrest to Social Services when the individual was fingerprinted, but did not report the resulting conviction. The manager of the applicant response unit explained that Justice did not share this individual's subsequent conviction information with Social Services because Justice only shares subsequent conviction information if an agency received a notice of the arrest as a subsequent arrest. In other words, because Justice shared information about this individual's arrest on the first RAP sheet it provided Social Services and not on a subsequent RAP sheet, Justice did not forward the conviction information.

When we questioned Justice's understanding of what information state law authorizes it to share, the assistant bureau chief asserted that the law was unclear, but agreed that Justice likely has the authority to disseminate a subsequent conviction without having first disseminated the preceding arrest. As a result of our discussion, the assistant bureau chief stated that it has begun taking steps to align its practices to disseminate subsequent conviction information to agencies authorized to receive subsequent arrest and disposition information, even if it has not shared the preceding arrest. Receiving all subsequent conviction information can help protect vulnerable populations, and the cases we reviewed demonstrate why it is crucial for Justice to share all subsequent conviction information with agencies authorized to receive this information. To ensure that Justice shares subsequent conviction information on an ongoing basis, we believe a change to state law is needed.

Although Justice facilitates the transmittal of federal criminal history information to various California entities—including criminal justice employers and transportation companies—when an individual is initially fingerprinted, Justice has not pursued obtaining subsequent federal

RAP sheets on behalf of these entities, even though the Legislature provided it the authority to do so in 2013. As a result, no entity in California that relies on RAP sheet information receives subsequent federal criminal history. At Social Services, this lack of complete information makes it possible for an individual who is already allowed to be present in a licensed facility to be arrested or convicted in another state without Social Services being alerted and taking necessary action to consider the individual's removal.

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**Justice has not pursued obtaining subsequent federal RAP sheets on behalf of these entities, even though the Legislature provided it the authority to do so in 2013.**

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When we first asked Justice about subsequent federal RAP sheets, the information services director stated that Justice had not heard about any interest in the service from the relevant entities in California. However, in response to our inquiry, the assistant bureau chief also acknowledged that Justice did not take any steps to educate these entities that subsequent federal RAP service was a possibility. Despite this, the assistant bureau chief stated in January 2017 that some of the entities in California that receive RAP sheets recently indicated an interest in this service, and Justice plans to begin working with the FBI on this issue in the spring of 2017. She further stated that Justice is committed to engaging with privacy and social justice advocates and inviting statewide public opinion related to this issue. She stated that Justice needs to engage in preliminary analysis and outreach before it can estimate how long it will take to implement this service. It is essential that Justice obtain federal subsequent RAP sheets so that Social Services and other entities in California that rely on this information have the criminal history information necessary to protect the clients they serve.

### **Departments' Sharing of Administrative Action Decisions Is Limited**

An administrative action is a formal action taken by a state department against an individual that can affect his or her ability to be present in a licensed facility. These actions can result from a department's background check or assessment that an individual's unprofessional conduct poses a risk to the clients the department is charged with protecting. To protect the health and safety of persons receiving care or services from individuals or facilities licensed or certified by the State, state law allows certain departments to share administrative action information with one another. Specifically, since July 2006, state law has allowed Social Services and

four departments that are also in the California Health and Human Services Agency—the California Department of Aging (Department of Aging), California Department of Public Health (Public Health), Department of Health Care Services (Health Care Services), and Emergency Medical Services Authority (Medical Services)—to share administrative action information with one another.<sup>3</sup> Further, state law requires Social Services, contingent on funding, to maintain a centralized database that these departments can use to access this information. It is important that these five departments share their administrative action information with each other, because an individual who is associated with one department may also be certified or present in a facility licensed by another of these departments.

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**Since July 2006, state law has allowed Social Services and four other departments that are also in the California Health and Human Services Agency to share administrative action information with one another.**

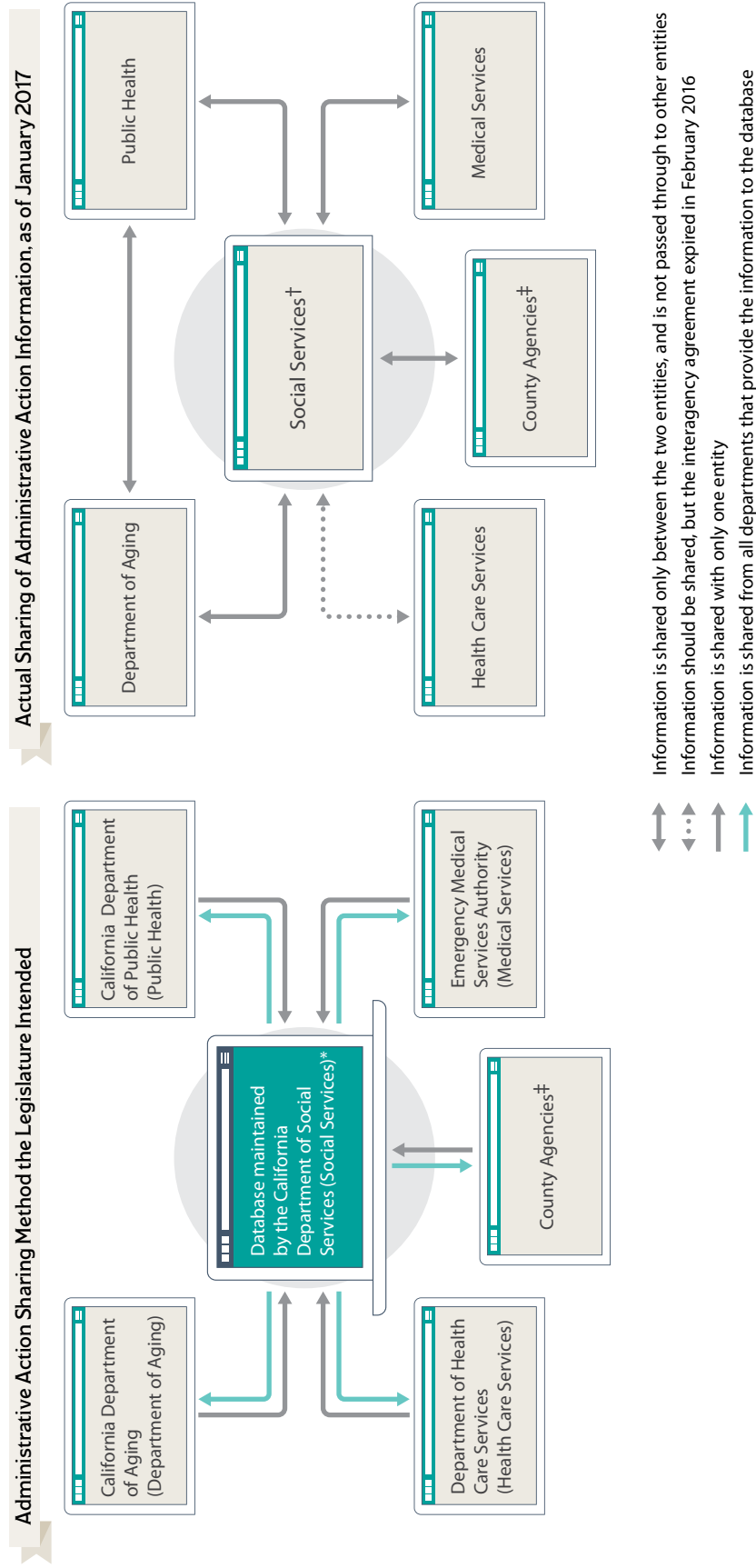
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Social Services has not developed a centralized database of administrative action information because it has not obtained funding for this purpose. According to the former chief of the Licensing Division's central operations branch, Social Services explored creating a database, but the funding that would have been necessary to implement the system was never successfully included in the state budget. In lieu of this database, to fulfill the intent of the law, Social Services entered into interagency agreements with each of the four other departments specifying that each department will share administrative action information with Social Services on a monthly basis.

However, although they facilitate some information sharing, these interagency agreements are an insufficient replacement for a centralized database. Specifically, they do not allow Social Services to act as a central resource from which the other departments could obtain administrative action information. This is because the interagency agreements prevent Social Services from sharing the information it receives with the other departments. Figure 3 demonstrates the difference between the information state law envisioned would be shared through a centralized database and the information departments are currently sharing with one another.

<sup>3</sup> Social Services has delegated its authority to 39 counties to perform certain licensing duties for foster family homes and to two counties to perform certain licensing duties for family child care homes, such as performing background checks for licensed facilities. These county agencies may also recommend that Social Services take administrative actions against individuals.

**Figure 3**  
**Difference Between How the Legislature Intended Departments to Share Information and How the Departments Are Actually Sharing the Information**



Sources: California State Auditor's analysis of Health and Safety Code section 1522.08; interagency agreements between Social Services, Public Health, Department of Aging, Health Care Services, and Medical Services; Social Services' memorandums of understanding with county agencies; and interviews with Social Services' management.

\* Contingent on funding, state law requires Social Services to maintain a centralized database for monitoring and tracking final administrative actions.

† Social Services does not forward the other state departments' administrative actions information to county agencies.

‡ Social Services has delegated its authority to 39 counties to perform certain licensing duties for foster family homes and to two counties to perform certain licensing duties for family child care homes, such as background checks for licensed facilities. These county agencies may recommend that Social Services take administrative actions against individuals.



When we asked why Social Services does not share the administrative action information with the other departments as the law intends, the chief of the CBCB stated that the other departments have agreements with one another to share this information. However, we contacted the four departments and learned that only Public Health and the Department of Aging have such an agreement with each other. Therefore, despite the chief of the CBCB's belief, the four other departments are likely not aware of all the administrative actions that each is taking against individuals.

Further, Social Services has had lapses in its own interagency agreements that have prevented it from accomplishing the intent of the law. Specifically, in 2016 Social Services' interagency agreements with Health Care Services and the Department of Aging expired. Social Services was able to reinstate its agreement with the Department of Aging almost four months after the previous agreement expired, and despite its expired agreement, the Department of Aging continued to share administrative action information with Social Services during the lapse. However, as of early January 2017, Social Services had not yet reinstated its agreement with Health Care Services. As a result, according to the analyst who was responsible for processing administrative actions from other departments, as of January 2017, Health Care Services had not shared administrative action information with Social Services for approximately 10 months. A deputy director at Health Care Services stated that an interagency agreement would not be necessary for exchanging information about administrative actions except for the purpose of establishing a routine reporting process between departments. Nevertheless, in the absence of an interagency agreement, Health Care Services has not shared such information. This highlights the importance of interagency agreements that establish that departments will share this information with one another.

The chief of the CBCB stated that she was not certain why the agreement with the Department of Aging expired, but she explained that the renewal of Health Care Services' agreement was delayed because she had concerns regarding changes Health Care Services requested to the agreement and did not follow up on her concerns in a timely manner. She also stated that she believed that the CBCB continued to receive and send administrative action information for the months that these agreements lapsed. However, as we previously stated, the analyst assigned to processing administrative actions from other departments asserted that Health Care Services did not send administrative action information for approximately 10 months. Therefore, the interagency agreements do not achieve the administrative action sharing that the law intended. Sharing this important information continually among all five departments would help the departments protect the health and safety of people receiving care in licensed or certified facilities in the State.



In addition, although state law allows county child welfare agencies to learn about other state departments' administrative actions, Social Services has not been sharing this critical information with them. When we asked the assistant chief of the CBCB why the counties are not getting this information, he stated that it is not feasible to do so because the CBCB would not know which county office to send an individual's administrative action to. However, he stated that Social Services is considering sending the entire list of individuals with administrative actions to all counties that perform licensing functions. Social Services should implement this proposal, because these counties perform background checks for individuals seeking to be present in foster family homes—and for two counties, family child care homes—and who will have contact with vulnerable individuals on behalf of Social Services. Because Social Services does not share administrative action information with the counties, counties may unknowingly allow an individual who poses a risk to clients to continue to work or be present in a licensed facility.

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**Social Services has not been sharing other state departments' administrative action information with county agencies.**

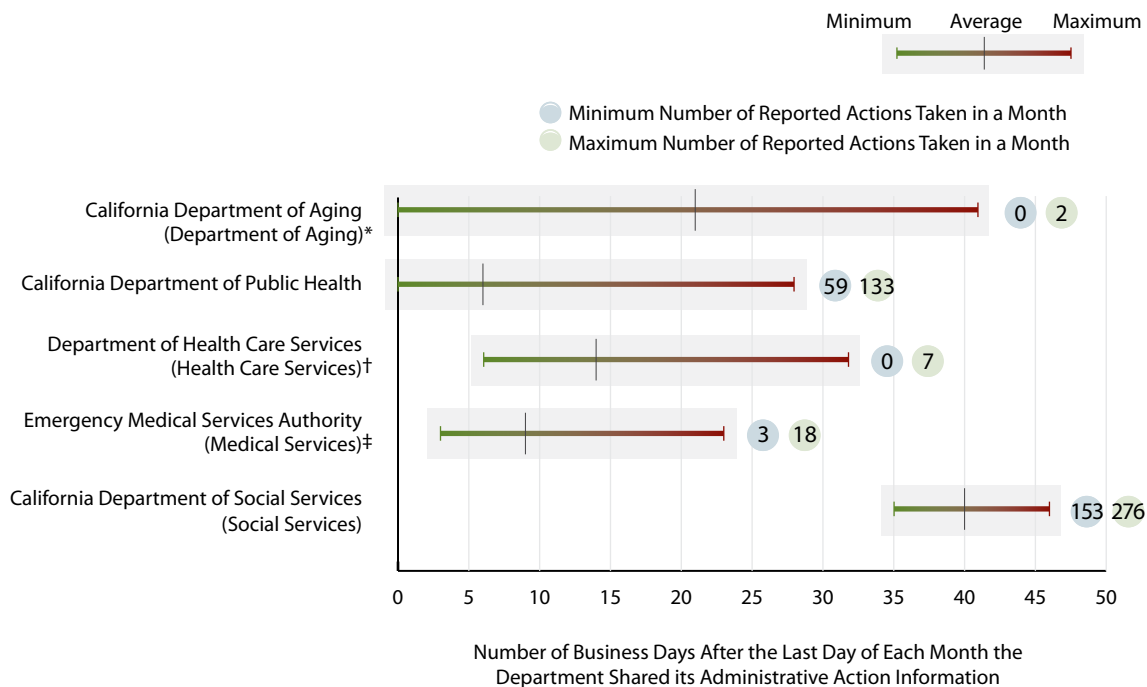
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Further, as shown in Figure 4 on the following page, in fiscal year 2015–16, Social Services and the other four departments did not always promptly submit administrative action information to each other. Delays in departments receiving information about administrative actions can prolong the length of time that an individual who poses a risk to clients remains in a facility. For example, in May 2016 Social Services learned that Public Health had taken administrative actions against 59 individuals in March 2016. Of these 59 individuals, five were identified by Social Services as being allowed to be present in its licensed facilities. Because administrative actions may relate to individuals who are already present around vulnerable populations, we believe the departments should take no more than five business days from the end of the month in which the action became final to submit their administrative action information lists to Social Services.

The delayed notifications between the departments are occurring partly because Social Services' agreements with the departments do not stipulate deadlines for them to submit their monthly administrative action information to one another. Although the interagency agreements state that the departments are to provide administrative action information monthly, the agreements do not

specify the date by which departments should share the information. The chief of the CBCB, who is also the project manager for these agreements, stated that she had not considered adding a timeline for providing the administrative action information because she did not see the need for that level of specificity. However, it is important for Social Services to define expectations for when departments should transmit this important information. Doing so would make clear that the information should be submitted in a timely fashion and would let Social Services know when it should expect to receive information about administrative actions taken by other departments.

**Figure 4**  
The Departments Did Not Promptly Provide Their Monthly Administrative Action Lists in Fiscal Year 2015–16



Sources: California State Auditor's analysis of the departments' monthly administrative action transmittals, administrative action reports, and Social Services' interagency agreement with Health Care Services.

Note: As stated in Table 8 beginning on page 71, we determined that the administrative action reports are not sufficiently reliable because of pervasive weaknesses in general controls over Social Services' information systems. However, we present these data in the report because they represent the best source available.

\* This figure does not include the Department of Aging's administrative action information for the month of October 2015 because we were unable to find documentation that the Department of Aging shared its administrative actions with Social Services for this month. Although a representative from the Department of Aging claimed the department did share the October 2015 information with Social Services in January 2016, documentation regarding the Department of Aging's January 2016 transmittal does not support his statement.

† By contract, Health Care Services has two divisions—Substance Use Disorder Compliance Division and Mental Health Services Division—which provide administrative action information to Social Services. Health Care Services' timeliness information reflects only the seven and eight months respectively for which these divisions submitted their administrative action information to Social Services. Because most of the Mental Health Services Division's transmittals to Social Services did not clearly indicate in what month the reported actions were finalized, we assumed for the purposes of this analysis that those transmittals reported actions finalized in the prior month.

‡ This figure represents Medical Services' timeliness of reporting its administrative action information to Social Services for the months of April 2016 through June 2016. From July 2015 through March 2016, Medical Services did not forward its monthly administrative action lists to Social Services. In April 2016, Medical Services acknowledged its lack of reporting, informed Social Services it had corrected the issue, and sent Social Services its administrative action information since July 2015. Therefore, we did not include Medical Services' April 2016 transmittal of its July 2015 through March 2016 administrative action information in our calculation of the department's timeliness.

Similarly, Social Services did not promptly share its administrative actions with the other state departments in fiscal year 2015–16. As Figure 4 indicates, Social Services took an average of 40 business days after the end of the month in which the actions occurred to share its administrative action information with other state departments in fiscal year 2015–16. When we asked the individual responsible for getting Social Services' administrative action information ready to share with the four departments about the delays, she stated that she cannot generate a list of administrative actions until she has closure information for each case, including a closure code. A closure code indicates what type of action Social Services took against the individual. She also informed us that legal staff can take varying amounts of time to prepare the closure information, depending on a case's circumstances. However, in response to our questioning its timeliness, in late January 2017 Social Services issued a directive to its staff to prepare its administrative action information in a timelier manner. Sharing its administrative action information with the other state departments more promptly will help the other departments protect the health and safety of the persons receiving care or services from individuals or facilities licensed or certified by the state.

### **Social Services Fails to Obtain the Full Value From Administrative Action Information**

Social Services does not always follow up promptly on cases in which an individual with an administrative action from another department is working or allowed to be present in a licensed facility. Records kept by Social Services indicate that in fiscal year 2015–16, it found that almost 90 individuals who received administrative actions from other departments were already allowed to be present in facilities it licensed. As of September 2016, according to those same records, 20 of these individuals had pending cases, meaning that Social Services had not reached a final determination regarding whether to take an action, such as an exclusion from its facilities, against these individuals. As of December 2016, we confirmed with Social Services that it was still determining how to proceed with most of these cases. According to the CBCB analyst who was responsible for tracking administrative action information, in seven of these cases Social Services was waiting for additional documentation from other departments to make its decision. We also noted that another seven of these cases were pending for at least six months.

Two cases we reviewed during our audit demonstrate why it is important for Social Services to quickly make decisions about individuals who received administrative actions from other departments. In one of these cases, Social Services took almost one year to conclude that the individual posed a risk to vulnerable populations and revoke the individual's home care aide registration.

In March 2016, Social Services learned that an individual registered to be a home care aide received an administrative action from another department for the individual's conduct. In June 2016, the analyst responsible for processing administrative actions from other departments forwarded all the necessary case files to the Home Care Services Bureau (Home Care Services) to evaluate whether the individual posed a risk to individuals receiving or seeking to receive home care services.

However, it was not until January 2017—less than two weeks after our questioning about the case—that Home Care Services revoked the individual's registration. This means that Home Care Services did not make a decision on the case for seven months. According to the chief of Home Care Services, her bureau was delayed in processing this individual's case because it was implementing a new program, developing policies and procedures, training staff, and developing written directives for the program. Nevertheless, because Home Care Services had all of the information it needed to make the decision seven months before it revoked the individual's home care aide registration, we believe it should have made a decision much sooner than it did.

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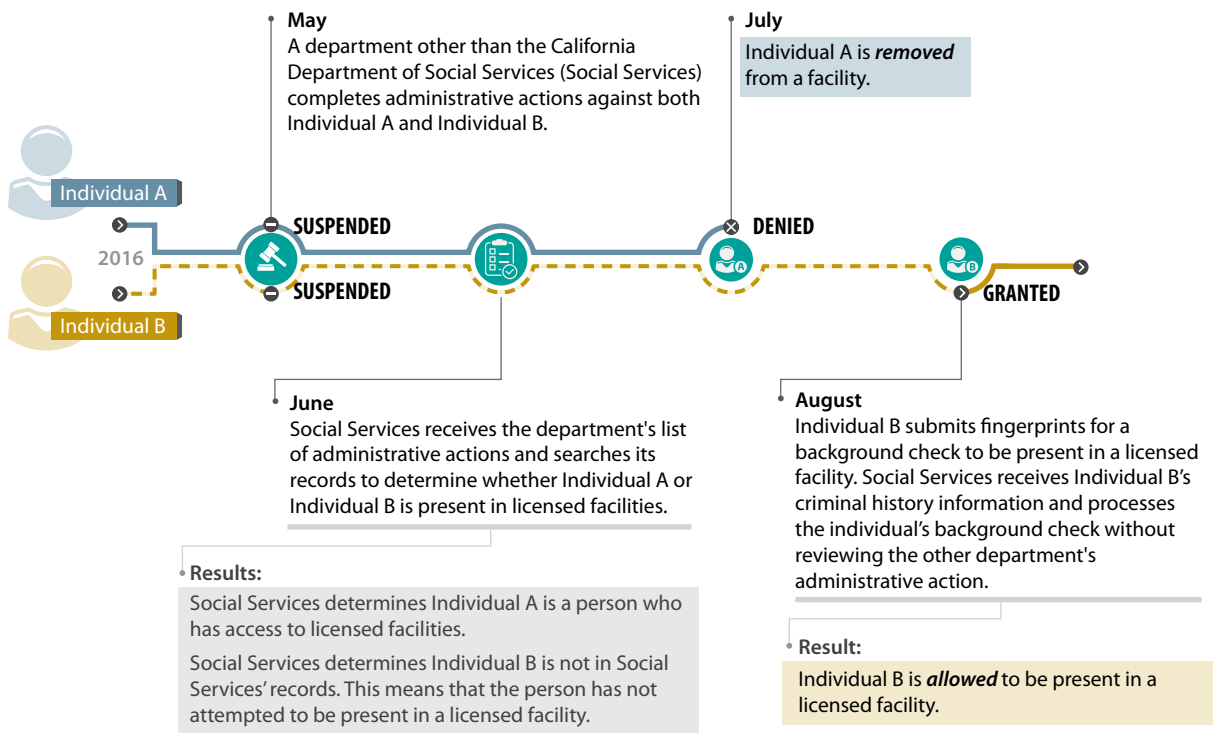
**Because Social Services took nearly four months to remove this individual from its care facility, it failed to fully protect the clients of the facility.**

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In the other administrative action case, Social Services took nearly four months to reach a decision about an individual associated with one of its elder care facilities. In October 2014, Social Services learned that an individual approved to be in this type of licensed facility had received an administrative action from another department for sexually abusing a resident in a nursing facility. However, Social Services allowed this individual to remain in the facility until February 2015. Because Social Services took nearly four months to remove this individual from its care facility, it failed to fully protect the clients of the facility. Furthermore, the chief of the CBCB stated that if the CBCB received this case now, it would have obtained additional information about the administrative action earlier than it did. This case demonstrates why it is important for Social Services to review administrative action cases from other departments as soon as possible to identify serious offenses such as sexual abuse, so that it can better protect vulnerable populations.

Social Services also does not adequately use the administrative action information it receives from other departments as part of its background check process. When Social Services receives administrative action information from another department, it cross-checks the information with its record of individuals who were fingerprinted to be in licensed facilities. However, as a result of this point-in-time review, Social Services does not identify individuals who later attempt to be present in a licensed facility as already having had administrative actions taken against them. Figure 5 illustrates how Social Services' point-in-time review of administrative actions can allow individuals who have been subject to these actions in the past to be present in its licensed facilities.

**Figure 5**  
**Illustrative Example Demonstrating That the California Department of Social Services' Point-in-Time Method of Reviewing Administrative Action Information Does Not Adequately Protect Vulnerable Populations**



Sources: California State Auditor's analysis of Social Services' administrative actions information exchange procedures and interviews with relevant staff.

According to the CBCB analyst who maintained the lists of administrative actions Social Services receives, other exemption analysts within Social Services do not typically ask to see the lists while performing their exemption reviews. He explained that exemption analysts ask to see a list if they become aware through

the background check process that an individual had an affiliation with another department, such as being certified as a nurse assistant through Public Health.

The chief of the CBCB cited the amount of time needed to check the lists as a reason for not routinely reviewing them. She explained that it would be very time-consuming to habitually check each department's administrative action list, because staff would have to manually look up each individual in each department's list. She stated that if a centralized database containing the administrative actions for all of the departments were available, there might be a way to have the CBCB's database, which contains background check information, check the administrative actions on a regular basis. Despite not having an automated system to check the CBCB's database, it is important for the CBCB to review these lists regularly to identify individuals with administrative actions who apply to be present in Social Services' licensed facilities.

## **Recommendations**

### ***Legislature***

To ensure that Social Services receives all necessary information for making exemption decisions, the Legislature should amend state law to require Justice to send Social Services all available sentencing information for all convictions. Additionally, the Legislature should amend state law to require Justice to send juvenile criminal history information related to serious and violent felony offenses as well as any other juvenile criminal history that Social Services identifies as valuable to its exemption reviews.

To ensure that any entity authorized by state or federal law to receive state or federal criminal history information subsequent to receiving the initial RAP sheet is informed of all criminal activity of an individual, the Legislature should do the following:

- Amend state law to clearly direct Justice to transmit all convictions it receives to the entities authorized to receive subsequent criminal history.
- Require Justice to obtain and transmit subsequent federal RAP sheets to all entities authorized to receive subsequent California criminal history information and to report to the Legislature periodically about its implementation efforts.

To ensure that all applicable entities share their administrative actions with each other as state law intends, the Legislature should amend state law to require that Social Services, the Department of Aging, Public Health, Health Care Services, Medical Services, and county agencies provide each other their administrative action information.

### ***Justice***

To ensure that Social Services receives all appropriate criminal history information, Justice should immediately update its procedures to accurately reflect that staff should disseminate nonreferable arrests when there is a corresponding conviction and ensure that staff follow these updated procedures.

### ***Social Services***

To ensure that it more effectively shares, receives, and uses administrative action information, Social Services should do the following:

- Develop and maintain a centralized database containing its own administrative actions and those received from other state departments, in order to share this information among these departments as required by state law. Social Services should seek funding if it believes additional resources are necessary.
- Until a centralized database can facilitate real-time information transmittal, amend its interagency agreements to specify that the departments should share their administrative action information as soon as possible after the action is final, but no later than five business days after the end of the month in which it became final. It should begin amending its interagency agreements by July 2017.
- Amend its interagency agreements so that the agreements remain in effect indefinitely. It should begin amending its interagency agreements by July 2017.
- As it receives administrative action information from other departments, share this information with the county agencies that perform licensing duties on its behalf.
- Direct its exemption analysts to review the administrative action information as part of their background check reviews.

To ensure that Social Services evaluates the risk individuals may pose to vulnerable populations in its licensed care facilities as quickly as possible, by July 2017 Social Services should establish time frames for staff to evaluate individuals who are present in their facilities and who have received administrative actions from other departments. In addition, it should monitor and follow up with the appropriate staff regarding the status of their assessments of these individuals and their final decisions.



## Social Services Does Not Always Obtain or Review All Appropriate Information Before Allowing Individuals Access to Facilities

### Key Points

- Social Services has implemented a policy to clear individuals to be present in licensed facilities without evaluating convictions for relatively minor crimes known as infractions that it is required by law to review. As a result, from fiscal years 2013–14 through 2015–16, the CBCB cleared more than 3,300 individuals with RAP sheets that contained only infraction convictions.
- The CBCB's background check case files lack essential information to support its decisions to grant exemptions. The files we reviewed did not always contain evidence that exemption analysts had obtained and reviewed required documents that would help inform them about an individual's character. Also, the CBCB allowed individuals access to facilities without obtaining self-disclosure forms that could indicate whether the individual had criminal convictions.
- We identified eight crimes—such as variations of rape charges—that state law provides Social Services discretion to exempt that are similar in nature to nonexemptible crimes. Adding the eight crimes to state law as nonexemptible would ensure that individuals convicted of those crimes are not allowed in facilities and also require Social Services to investigate the circumstances of arrests for these crimes.

### Social Services Inappropriately Clears All Infraction Convictions

Contrary to requirements in state law, the CBCB clears individuals to be present in licensed facilities without reviewing convictions for relatively minor crimes known as infractions. State law requires that Social Services deny an individual's ability to be present in a licensed facility if the individual has been convicted of a crime—other than a minor traffic violation—unless Social Services grants the individual an exemption. However, Social Services' background check procedures direct its staff to review only convictions for misdemeanors or felonies, and not infraction convictions, when they consider whether to grant an individual an exemption. The text box identifies the differences among the three conviction types and lists some of the crimes that could result in those types of convictions. Social Services has interpreted "minor traffic violation" to include all infractions, traffic or otherwise. We believe that this interpretation is overly broad.

#### Types of Convictions

**Infraction:** Crimes that are punishable by a fine imposed by a court. These fines are collected by an entity other than Social Services. Infractions can include theft, leaving a child under six years of age in a vehicle without supervision, and selling liquor to a minor.

**Misdemeanor:** Crimes that are punishable by imprisonment in county jail for up to a year. Misdemeanors can include driving under the influence, battery, and forgery.

**Felony:** Generally, crimes that are punishable by death or by imprisonment in state prison or county jail. Felonies can include burglary, conspiracy, and carrying a concealed firearm in certain circumstances.

Sources: California State Auditor's analysis of the Penal Code and RAP sheets we reviewed as part of this audit.

As a result of Social Services' interpretation, the CBCB has not evaluated the circumstances of thousands of infraction convictions it has received. In fiscal years 2013–14 through 2015–16, the CBCB cleared more than 3,300 individuals whose RAP sheets contained only infraction convictions. Although some of these convictions related to minor traffic violations, we observed that others did not, such as theft, selling liquor to a minor, and leaving a child under six years of age in a vehicle without supervision.

If the CBCB evaluated infraction convictions, it would better protect vulnerable populations in licensed facilities. For example, we reviewed a RAP sheet from 2016 for an individual who had two recent infraction convictions related to arrests for dangerous driving. The CBCB cleared this individual to work in a residential care facility for the elderly. However, if the CBCB had evaluated these convictions as the law requires, it would have required the individual to seek an exemption, and in granting the exemption it may have chosen to restrict the individual's role in the facility by specifying that the individual is not allowed to transport clients of the facility.

Social Services also ignores infraction convictions when they appear on RAP sheets alongside misdemeanor or felony convictions. For example, we observed in a background check case file that the individual's RAP sheet included a misdemeanor conviction for assault and battery and an infraction conviction for disorderly conduct. In the corresponding exemption decision summary, the analyst discussed her evaluation of the misdemeanor but did not analyze the infraction conviction.

### **Incomplete Records Raise Questions About the Appropriateness of Exemption Decisions**

As we describe in the Introduction, state law allows the CBCB to grant an individual with criminal convictions an exemption to be present in a licensed facility if the CBCB determines that the individual is of good character. In addition, state regulations require that Social Services maintain the written reason for why any exemption was granted or denied. The CBCB implements these regulations by requiring its exemption analysts to write decision summaries for the exemptions it grants and denies. According to information contained in the CBCB's training materials and policy manual, a decision summary must include, among other things, an analysis of how the individual's description of his or her crimes compares to law enforcement reports, which is used to determine the individual's truthfulness, as well as a description of the evidence the individual submits to demonstrate his or her rehabilitation and good character. The training materials further

state that the exemption decision summaries must be objective, factual, and written so that anyone who is unfamiliar with the case can understand and be persuaded by the analyst's recommendation to grant or deny an exemption.

We expected to find that the CBCB fully justified its exemption decisions by maintaining background check case records and decision summaries in accordance with these requirements. However, it sometimes did not. We reviewed background check case records related to 20 individuals to whom the CBCB granted exemptions between fiscal years 2002–03 through 2015–16.<sup>4</sup> Of these 20 exemptions, the CBCB did not have decision summaries to support four of the exemptions it granted. When we asked about the missing decision summaries, CBCB staff members could not provide definitive explanations for why they were missing. According to the chief of the CBCB, the missing decision summaries demonstrate inappropriate case management, because the summaries are how the CBCB defends its decisions to grant or deny exemptions. Without the documented reasons for its exemption decisions, the CBCB cannot effectively defend these decisions.

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**Of these 20 exemptions, the CBCB did not have decision summaries to support four of the exemptions it granted.**

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Further, we found that exemption analysts did not always demonstrate that they considered all the information they are required to evaluate when making exemption decisions. Specifically, the analysts did not appropriately address the character references the CBCB received in five of the decision summaries we reviewed.

The CBCB's training materials state that exemption analysts must document the receipt of character references and explain whether the references are positive or not in the decision summary. In one of these five decision summaries, the exemption analyst indicated that she had concerns regarding the individual's character references, but she did not explain her concerns in the assessment. The analyst's manager stated that he would have expected to see an explanation of the analyst's concerns in the decision summary. Because she did not explain her concerns in the decision summary, it is unknown

<sup>4</sup> We reviewed five exemptions for individuals with either an arrest or a conviction after Social Services granted an earlier exemption. One of these earlier exemptions we reviewed was from fiscal year 2002–03.

how the exemption analyst factored the concerns into her decision to grant the exemption, which could lead to questions about the overall quality of the exemption decision.

In two other exemptions we reviewed, the CBCB's exemption analysts did not properly document an analysis of the individual's truthfulness. State regulations specify that Social Services shall consider the individual's honesty and truthfulness (truthfulness) as revealed in exemption application documents when determining whether to grant an exemption. Social Services' policies related to granting exemptions indicate that the assessment of truthfulness is important because it helps provide evidence of the individual's rehabilitation. In one of these two cases, an analyst marked that the individual was truthful, despite the analyst lacking the documents to make this assessment. In the second of these cases, the individual made light of and did not accurately describe his arrest for soliciting sex, but the analyst did not address his dishonesty in the exemption summary. The analyst told us she did not consider the lack of truthfulness crucial to her decision to grant an exemption, in part because at least 14 years had passed since the individual had committed his crimes. However, the analyst should have documented her reasons for disregarding this individual's lack of truthfulness, because Social Services must have evidence of good character in order to grant an exemption and truthfulness is one source of evidence of good character.

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**Social Services must have evidence of good character in order to grant an exemption and truthfulness is one source of evidence of good character.**

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The chief of the CBCB explained that truthfulness in an individual's description of his or her crimes is one of many factors the CBCB analysts evaluate when determining whether to grant an exemption. She further stated that for individuals with criminal histories involving relatively old crimes, the CBCB may choose not to deny an exemption based only on discrepancies between the individual's description of the crime and the law enforcement report, because an administrative law judge would likely not uphold the CBCB's decision to deny the exemption on that basis if the individual appealed the decision. Nevertheless, the exemption analysts should thoroughly document their reasoning for exemption decisions, including the element of truthfulness, which the CBCB directs its staff to review as part of an assessment of an individual's rehabilitation.

In addition, the CBCB does not always receive or obtain all of the documents it requires exemption analysts to consider when granting exemptions. Specifically, we found that for 17 of the 18 background check cases we reviewed from fiscal years 2013–14 through 2015–16, the CBCB did not receive all of the required documents, such as law enforcement reports or proof of restitution, before deciding whether to grant an exemption. Despite the missing documents, the CBCB granted exemptions for 13 of these 17 exemption requests. Table 1 identifies what items the CBCB did not obtain for these 13 cases. These documents are important for the CBCB to obtain because they help demonstrate an individual's character and level of risk to a licensed facility's clients.

**Table 1**  
The CBCB Did Not Obtain Various Required Documents Before Granting Exemptions

BACKGROUND CHECK CASE	SELF-DISCLOSURE FORM*	DOCUMENTATION INDICATING THAT THE INDIVIDUAL'S CURRENT OR LAST PERIOD OF PROBATION WAS UNSUPERVISED OR THAT SUPERVISED PROBATION WAS SUCCESSFULLY COMPLETED <sup>†</sup>	VERIFICATION OF COMPLETION OF ANY TRAINING, CLASSES, COURSES, TREATMENT, OR COUNSELING	COPY OF ALL LAW ENFORCEMENT REPORTS INVOLVING THE CRIME(S) FOR WHICH THE INDIVIDUAL WAS CONVICTED OR A LETTER FROM A LAW ENFORCEMENT AGENCY STATING THAT A REPORT NO LONGER EXISTS <sup>†</sup>	PROOF OF RESTITUTION <sup>‡</sup>
1	✗	✓	✗	✓	✓
2	✓	✓	✗	✓	✓
3	✗	✗	✗	✓	✗
4	✗	✓	✗	✓	✗
5	✗	✗	✗	✓	✗
6	✗	✓	✓	✓	✓
7	✗	✗	✗	✓	✗
8	✓	✗	✗	✓	✗
9	✓	✓	✗	✗	✗
10	✗	✓	✓	✓	✗
11	✓	✓	✗	✓	✗
12	✗	✓	✗	✗	✓
13	✓	✓	✓	✓	✗

Sources: California State Auditor's analysis of the CBCB background check case files, policies, and state regulations.

✗ = The CBCB did not receive or obtain the document.

✓ = The CBCB received or obtained the document.

\* Regulations require individuals who apply to be present in a licensed facility to sign a criminal history self-disclosure form. A person signing the criminal history self-disclosure form must declare whether he or she has been convicted of a crime other than a minor traffic violation.

† Social Services may attempt to obtain law enforcement reports or documents that indicate probation sentencing, such as court documents, on behalf of an individual who does not submit them on his or her own. For the purposes of this table, if Social Services attempted but was unable to obtain law enforcement reports or probation documents, we did not consider the document to be missing.

‡ Restitution is monetary compensation, generally ordered by a judge, for a crime. For example, state law requires judges to order an offender to pay restitution when a victim of a crime has suffered an economic loss as a result of the offender's conduct. For the cases that we show as missing proof of restitution, we confirmed through sentencing information that the individual was required to pay restitution.

For example, in one of these 13 cases, the individual submitted an unsigned certificate to prove that he or she completed a court-ordered first offender drinking and driving program. The exemption analyst stated that she did not request additional proof of completion because it is general practice in the CBCB to consider court-ordered courses to be completed by the individual if the individual submits court documents as proof that his or her probation has ended. However, we found no evidence in the case file we reviewed that showed that the individual had submitted court documents indicating that probation ended. As a result, the CBCB analyst's decision to grant an exemption relies on an assumption that the individual completed probation and the rehabilitation course without evidence that this actually occurred.

The CBCB's background check case files are incomplete in part because the CBCB does not require individuals to submit all relevant documents. As previously presented in the text box on page 7, the CBCB requires individuals or facilities seeking an exemption to submit specific documents. The CBCB includes a request for these documents in the letter it uses to inform individuals and licensed facilities that an exemption is needed (exemption-needed letter). However, the exemption-needed letters the CBCB uses do not ask individuals to submit other documents that the CBCB's regulations and policy direct its exemption analysts to consider. These are documents that demonstrate successful completion of supervised probation, criminal history self-disclosure forms for individuals requesting exemptions on their own, and proof of court-ordered payment to persons who suffer losses, such as property loss, as a result of the crime (restitution).<sup>5</sup> State law generally requires the courts to order restitution as part of an individual's sentence when a victim suffers economic loss as a result of an individual's conduct. As a result of its incomplete exemption-needed letters, the CBCB did not always obtain these additional documents in the cases we reviewed.

Another reason why the CBCB did not obtain all required documents is that, contrary to Social Services' policy, the CBCB's exemption analysts did not always follow up to obtain missing documents. Social Services' policy is to issue follow-up letters to inform the licensed facility and the individual of what items are missing from an exemption request. We evaluated the CBCB's response to 10 individuals who submitted incomplete exemption requests for fiscal year 2013–14 through 2015–16. We found that in six of the 10 cases we reviewed, exemption analysts did not request all of the missing items in a follow-up letter.

<sup>5</sup> If a facility does not request an exemption on behalf of an individual or chooses not to hire the individual after learning of his or her criminal history, the individual may request an exemption on his or her own behalf. The CBCB does not require individuals requesting exemptions on their own behalf to submit a criminal history self-disclosure form. This practice is contrary to the CBCB's policy and regulations.

In many of the exemption cases we reviewed, instead of asking for the missing documents, the CBCB exemption analysts themselves obtained or attempted to obtain information that individuals or facilities were required to submit. Of the 29 exemption cases we reviewed throughout our audit, analysts attempted to obtain law enforcement or court documents in 22 cases. Officials at Social Services asserted that it is not useful for an individual to provide these law enforcement reports because the reports can be redacted, preventing the CBCB from assessing the individual's actions related to the arrest. These officials stated that it is necessary for exemption analysts to obtain law enforcement reports because the reports are needed to assess the circumstances of the arrest. However, this practice is contrary to Social Services' policy, as identified in the exemption-needed letter, which asks the individual or facility to submit law enforcement or court documents. As a result of these requests, the CBCB incurs costs for documents that its policy suggests an individual should have provided. Social Services' records show that in fiscal year 2015–16 the CBCB spent about \$6,500 to obtain these records.<sup>6</sup> Because Social Services' policy and direction to individuals requesting exemptions is not aligned with the CBCB's practice, individuals requesting exemptions may obtain and submit documents that Social Services cannot use.

When we asked the chief of the CBCB why its background check case files do not contain all of the required documents, she stated that, depending on the circumstances, analysts may not need all of the required items to make an exemption decision. For example, the chief stated that CBCB staff often does not obtain or request the court documents, such as court transcripts, unless the CBCB needs information about the individual's sentence or documentation to support an individual's statement. In addition, when we asked why the CBCB does not require individuals seeking their own exemptions to submit criminal history self-disclosure forms, the chief of the CBCB stated that individuals do not generally have access to the self-disclosure form they submitted to a facility during the application process.

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**Social Services contends that analysts may not need all of the required items to make an exemption decision.**

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<sup>6</sup> Approximately one-third of this cost is attributable to a single law enforcement agency, the Los Angeles County Sheriff's Department, which is the only law enforcement agency in the State that Social Services paid to obtain arrest records during fiscal year 2015–16. Social Services paid the remaining two-thirds of the cost to courts and out-of-state law enforcement agencies.



However, regulations require the CBCB to evaluate court documents and the criminal history self-disclosure form for every exemption decision. Further, the chief of the CBCB did not provide an explanation for why the CBCB exemption-needed letter does not ask for support that an individual completed formal probation, but she stated that the letter does not ask the individual to submit proof of restitution because restitution does not apply to all cases. Nevertheless, restitution did apply to the cases in Table 1 on page 31, and the CBCB did not always obtain proof that it was paid. Additionally, the CBCB's policy requires the analyst to evaluate both of these items if applicable when making exemption decisions. If the letter does not ask for documentation of whether restitution applies, it could be difficult to know whether it does. Regulations allow the CBCB to deny an exemption request if the individual fails to provide the necessary documents. Despite that authority, we reviewed numerous cases in which the CBCB continued to process exemption decisions without complete documentation. When the CBCB does not obtain all of the required documentation before making exemption decisions, it risks that its exemption analysts may miss a critical piece of information that would change a decision.

### **Social Services Is Not Consistently Obtaining and Using Self-Disclosed Conviction Information**

Social Services' practice related to obtaining an individual's signed self-disclosure form identifying his or her convictions is not aligned with state law. Under state law, Social Services can initially allow an individual to be present in a licensed facility based on his or her in-state criminal history before the federal RAP sheet is received, only if the individual has submitted a self-disclosure form attesting that he or she has never been convicted of a crime, other than a minor traffic violation, in the United States.<sup>7</sup> Contrary to state law, however, Social Services does not obtain self-disclosure forms for all individuals it allows to access licensed facilities in advance of receiving their federal criminal history. Social Services' policy related to these disclosures suggests that a licensed facility should send its regional office a copy of an individual's self-disclosure form only if the individual discloses convictions.<sup>8</sup> In turn, the regional office must submit the form to the CBCB. In other words, Social Services' policy presumes that if the CBCB does not have an individual's self-disclosure form, the form indicated no convictions. However, it is also possible that the individual never completed a

<sup>7</sup> However, state law requires that Social Services obtain California and federal criminal history information before issuing a license or certificate of approval to any individual to operate a foster family home or certified family facility.

<sup>8</sup> Social Services has 27 regional offices that are each assigned a geographic jurisdiction for administering and ensuring the compliance of licensed facilities for the Child Care Program, Children's Residential Program, and Adult and Senior Care programs.



self-disclosure form. Social Services' approach to self-disclosure forms thus defers its responsibility to verify that individuals did not disclose any convictions to the facilities it licenses.

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**Contrary to state law, Social Services does not obtain self-disclosure forms for all individuals it allows to access licensed facilities in advance of receiving their federal criminal history.**

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Further, Social Services' approach to self-disclosure forms is not functioning as intended. According to our conversations with staff at Social Services, some regional offices do not collect self-disclosure forms for individuals applying for employment. One assistant program administrator who oversees five regional offices explained that her regional offices do not expect to receive self-disclosure forms for individuals applying for employment who disclose criminal convictions, because these individuals will require an exemption before they can work in a licensed facility. A regional manager under the direction of a different program administrator also confirmed this practice. He informed us that instead of receiving self-disclosure forms, his office asks the licensed facilities to maintain the forms in their personnel files. Because some regional offices do not receive any self-disclosure forms for individuals applying for employment, some of whom disclose convictions, the CBCB is incorrectly assuming that a lack of a self-disclosure form means that the individual did not disclose any convictions.

When the CBCB does not obtain self-disclosure forms before allowing individuals to be present in facilities, it may allow individuals with federal criminal histories into facilities prematurely. For example, we identified a background check case from 2014 in which the CBCB cleared an individual without a criminal history in California to be present in a licensed facility, although the CBCB had not yet received the individual's federal criminal history or self-disclosure form. More than a month later, the CBCB received the individual's federal RAP sheet, which showed that the individual did have an out-of-state conviction. Had the CBCB obtained a self-disclosure form for this individual, the form may have indicated that the individual had out-of-state convictions and should not be allowed in a facility without a full exemption review. Because it did not obtain a self-disclosure form, the CBCB should have waited

for the federal criminal history before allowing the individual to be in a facility. The CBCB eventually issued an exemption for this individual's out-of-state conviction, but it did so five months after originally clearing the individual to be in a facility. Because the CBCB did not require a self-disclosure form and it did not wait for the federal RAP sheet for this individual before granting a clearance, it allowed an individual with a criminal history to be present in a facility without any review, which may have risked the safety of the facility's clients.

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**The CBCB should have waited for the federal criminal history before allowing the individual to be in a facility.**

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A change to state law to prohibit the CBCB from allowing an individual to be present in a licensed facility until it receives information from Justice about California and out-of-state convictions would mitigate the risk associated with Social Services not always receiving self-disclosure forms. Specifically, it would ensure that Social Services is knowledgeable of individuals' complete criminal histories before it allows them to be present in licensed facilities. Changing the law would not unreasonably delay the background check process for individuals with convictions because, in fiscal year 2015–16, Justice provided both California and federal criminal history reports to Social Services within one month, on average. For the same fiscal year, when individuals did not have any convictions in the United States, Justice notified Social Services within two days, on average, after the individuals submitted their fingerprints to Justice. Therefore, a change to state law to require that Social Services receive both state and federal criminal history information before allowing individuals to be present in facilities would not unduly delay Social Services' exemption process, and it would eliminate the risk of initially allowing individuals into facilities before learning of their entire criminal history.

**The List of Nonexemptible Crimes in State Law Should Be Expanded**

State law's list of crimes that are nonexemptible should be augmented with similar crimes to reduce risk to the safety of clients in Social Services' licensed facilities. As discussed previously, state law specifies crimes for which the CBCB cannot grant an individual an exemption, such as convictions for murder, kidnapping, and

incest. If an individual has a conviction for one of these crimes, the CBCB cannot allow the individual to be in a licensed facility. Similarly, Social Services must investigate any arrests for these same crimes if there is no corresponding conviction. However, as shown in Table 2, we identified eight crimes that the CBCB can issue exemptions for despite their similarity to nonexemptible crimes. For example, the CBCB cannot grant an exemption to an individual convicted of rape of a spouse by means of force or by threatening retaliation. However, the CBCB can grant an exemption if the spouse was unconscious during the act. It is important that these similar crimes are added to the nonexemptible list to better protect the safety of clients in Social Services' licensed facilities.

**Table 2**  
**State Law Allows the CBCB to Exempt Crimes That Are Similar to Nonexemptible Crimes**

NONEXEMPTIBLE CRIMES (AN INDIVIDUAL CANNOT BE PRESENT IN A LICENSED FACILITY)	SIMILAR CRIMES THAT CAN BE EXEMPTED (THE CBCB CAN ALLOW AN INDIVIDUAL TO BE PRESENT IN A LICENSED FACILITY)
Penal Code sections 261(a)(1)(2)(3)(4) or (6): Rape under a variety of circumstances, including: accomplished by means of violence, when the person is unconscious, or when the person is prevented from resisting by an intoxicating substance.	<p>Penal Code section 261(a)(5): Rape where the person submits under the belief the person committing the act is someone known to the victim other than the accused.</p> <p>Penal Code section 261(a)(7): Rape where the act is accomplished by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another and the victim has a reasonable belief that the perpetrator is a public official.</p>
Penal Code sections 262(a)(1) or (4): Rape of a spouse by means of force or by threatening retaliation.	<p>Penal Code section 262(a)(2): Rape of a spouse where the person is prevented from resisting by any intoxicating or anesthetic substance.</p> <p>Penal Code section 262(a)(3): Rape of a spouse where the person is at the time unconscious of the nature of the act, including if the victim is asleep.</p> <p>Penal Code section 262(a)(5): Rape of a spouse where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another.</p>
Penal Code section 266h(b): Pimping a minor.	Penal Code section 266h(a): Pimping (not of a minor).
Penal Code section 266i(b): Pandering a minor.	Penal Code section 266i(a): Pandering (not of a minor).
Penal Code section 368: Elder abuse, including identity theft of an elder or dependent adult.	Penal Code section 530.5: Identity theft.

Sources: California State Auditor's analysis of sections of the Penal Code as noted in the table and the Health and Safety Code section 1522(g), which enumerates the crimes that the CBCB cannot exempt.

From fiscal years 2013–14 through 2015–16, Social Services received RAP sheets that mentioned at least one of these eight crimes for more than 600 individuals. More than 97 percent of these RAP sheets contained an arrest or conviction for identity theft. During the same time frame, the CBCB allowed more than 40 individuals with arrests or convictions for one or more of these eight crimes to be present in licensed facilities. These decisions were allowable under current state law. For example, one of these 40 individuals was convicted of identity theft, yet the CBCB allowed her to

be certified as an administrator of a residential care facility for the elderly. An administrator can be responsible for the overall management of a facility and could have access to residents' sensitive personal information. As Table 2 shows, although the crime of identity theft is exemptible, identity theft involving the elderly population the individual would be working with is nonexemptible. Allowing an individual with this type of history to be present in a facility that cares for the elderly could present a risk to the facility's clients.

Changing state law to designate these eight crimes as nonexemptible will also require Social Services to review an individual's character when a RAP sheet identifies an arrest for one of these crimes. Social Services does not currently investigate arrests for these eight crimes as part of its exemption process, because it is not required to conduct such investigations. As a result, Social Services may allow an individual with such an arrest to be present in a licensed facility, depending on the remainder of the crimes identified on his or her RAP sheet. However, if the Legislature designated these crimes as nonexemptible, Social Services would be required to investigate the circumstances of the arrest before granting an exemption. For example, the criminal history for one of the 40 individuals we identified shows that the individual was arrested for identity theft and charged with possessing personal identifying information for 10 or more people, with the intent to defraud. At the time of Social Services' review, the individual had not been convicted of this crime. The CBCB cleared this individual to work in an Alzheimer's care facility because the crime is exemptible under the law. However, if the crime had been nonexemptible, the CBCB would have been required to investigate the conduct related to the arrest before determining whether to allow the individual access to the facility. Designating these eight crimes as nonexemptible will better ensure the safety of vulnerable clients in licensed facilities.

## **Recommendations**

### ***Legislature***

To better ensure the safety of clients in licensed facilities, the Legislature should amend state law to do the following:

- Require that Social Services receive state and federal RAP sheets for individuals before allowing them access to licensed facilities.
- Expand the list of nonexemptible crimes to include the eight crimes we identified and any other crimes it deems appropriate.

### **Social Services**

To comply with state law and better protect vulnerable populations in California's licensed facilities, Social Services should immediately change its policy to require that its exemption analysts evaluate all infraction convictions, other than minor traffic violations, before granting exemptions to individuals. If Social Services believes it is not feasible to evaluate all of these convictions, it should report to the Legislature by June 2017 how it ensures that vulnerable populations are not at risk and should request that the Legislature change the law to eliminate infraction convictions as a crime category that Social Services must evaluate in order to grant an exemption.

To comply with state regulations and its policies, the CBCB should immediately take the following actions:

- Ensure that its background check case files support its exemption decisions by including complete decision summaries and all required supporting documents.
- Update its exemption-needed letter to identify all of the documents its policies require exemption analysts to evaluate when deciding whether to grant an exemption. The letter should also eliminate requests for documents that Social Services does not believe can be used if the applicant obtains them, such as law enforcement reports.

To ensure that its exemption analysts are receiving information that Social Services believes is necessary and relevant to make exemption decisions, Social Services should immediately revise its policy to require that exemption analysts obtain law enforcement reports on behalf of individuals who seek exemptions.

Until the Legislature requires that Social Services receive both California and federal criminal history information before issuing a clearance or processing an exemption, Social Services should immediately do the following to better protect vulnerable populations:

- Revise its policy to require its regional offices to obtain all self-disclosure forms for individuals who submit fingerprints to Justice as part of an application to be present in a licensed facility. The regional offices should then forward to the CBCB all self-disclosure forms that identify a conviction.
- Change its practice of allowing individuals who have not submitted a self-disclosure form to Social Services to have access to licensed facilities, thus reflecting the requirements of state

law. In addition, the CBCB should develop a process to ensure that individuals cannot receive a clearance or an exemption without the CBCB first receiving both California and federal criminal history information if a regional office does not have a self-disclosure form for the individual.

## Delays at Justice and Social Services Prolong the Time It Takes to Issue Exemption Decisions

### Key Points

- Justice does not always provide Social Services with criminal history information within 14 days of receiving fingerprints for individuals who seek to be present in a licensed facility, as state law requires. Further, Justice does not always receive arrest and conviction information from the criminal justice community as state law requires. As a result, the criminal history information Justice maintains and distributes to authorized entities throughout California is incomplete. As of February 2017, Justice had not followed through with an April 2016 commitment to reconvene a committee to address this reporting problem.
- We found significant delays in Social Services' processing of exemptions, investigations of arrest-only cases, and pursuit of legal actions, with some of these delays being within its control. From fiscal years 2013–14 through 2015–16, it took an average of six months to make an exemption decision. In addition, at the time of our review, the CBCB had more than 1,000 cases pending that were received before 2016. Most of these cases had no recorded activity in the preceding six months.
- Social Services complied with state law—including requirements introduced recently by AB 2632—by completing investigations of arrests for specific crimes before deciding to allow or deny an individual access to a licensed facility. However, it has not consistently conducted site visits to verify that previously authorized individuals that it subsequently determined to be a risk to vulnerable populations have left those licensed facilities. In four of six cases we reviewed in which Social Services ordered the removal of an individual, it had not visited the facility to verify the removal.

### Justice Often Delays Transmitting RAP Sheets and Lacks Complete Criminal History Information

As we discussed previously, the RAP sheets Social Services uses to begin to evaluate a person's criminal history come from Justice, which retrieves them based on the individual's fingerprints. Although state law specifies that within 14 days of receiving an individual's fingerprints, Justice must provide criminal history information or a notification that the individual has no criminal record, Justice regularly does not meet this requirement. As shown in Table 3 on the following page, in fiscal years 2013–14 through 2015–16, Justice quickly provided Social Services the notices for individuals who did not have a criminal history. However, for individuals who did have a criminal history, Justice did not consistently provide Social Services the needed information within the required period of time. On a positive note, the time for transmitting the RAP sheets significantly decreased in fiscal year 2015–16. However, Table 3 also shows there is room for improving the timeliness of the submittals. Specifically, for the three fiscal years we reviewed, Justice provided Social Services with nearly 62,000 RAP sheets after the 14-day requirement had passed. In fact, Justice sent the RAP sheets to Social Services an average of between 30 and 66 days after fingerprinting.

**Table 3**  
**Justice Does Not Always Supply Social Services With Criminal Histories Within the 14-Day Requirement**

INFORMATION PROVIDED BY THE CALIFORNIA DEPARTMENT OF JUSTICE (JUSTICE)	FISCAL YEAR 2013-14				FISCAL YEAR 2014-15				FISCAL YEAR 2015-16			
	NUMBER OF BACKGROUND CHECK RESPONSES	AVERAGE NUMBER OF DAYS TO SEND INFORMATION	PERCENTAGE OF CHECK RESPONSES SENT AFTER 14 DAYS	FOR RESPONSES SENT AFTER 14 DAYS, AVERAGE NUMBER OF DAYS TO SEND INFORMATION	NUMBER OF BACKGROUND CHECK RESPONSES	AVERAGE NUMBER OF DAYS TO SEND INFORMATION	PERCENTAGE OF CHECK RESPONSES SENT AFTER 14 DAYS	FOR RESPONSES SENT AFTER 14 DAYS, AVERAGE NUMBER OF DAYS TO SEND INFORMATION	NUMBER OF BACKGROUND CHECK RESPONSES	AVERAGE NUMBER OF DAYS TO SEND INFORMATION	PERCENTAGE OF CHECK RESPONSES SENT AFTER 14 DAYS	FOR RESPONSES SENT AFTER 14 DAYS, AVERAGE NUMBER OF DAYS TO SEND INFORMATION
RAP sheet with California criminal history	16,017	27	8,963 (56%)	41	18,382	35	11,228 (61%)	54	20,342	26	10,901 (54%)	42
No record of California criminal history	151,764	1	3,586 (2%)	31	157,111	2	4,257 (3%)	37	164,471	2	4,027 (2%)	33
RAP sheet with federal criminal history	2,315	41	1,908 (82%)	48	2,960	44	1,924 (65%)	66	2,865	14	988 (34%)	30
No record of federal criminal history	164,692	2	5,752 (3%)	33	171,577	1	2,359 (1%)	64	178,845	2	6,089 (3%)	32
<b>Subtotal number of background check responses sent after 14 days:</b>			<b>20,209</b>				<b>19,768</b>				<b>22,005</b>	
									<b>Grand total number of background check responses sent after 14 days: 61,982</b>			

Source: California State Auditor's analysis of data obtained from Justice's Applicant Processor system.

Note: The number of days measurement begins when Justice loads the readable fingerprints into the Applicant Processor system. Further, this table only includes the background check responses related to Social Services' Licensing Division's licensed facilities, excluding responses related to the Home Care Aide program.



Justice acknowledged that it does not always provide information to Social Services within the required time frames. Justice's assistant bureau chief stated that these delays can be a result of a variety of factors, including needing to manually verify fingerprint images, but that most delays are due to complications in identifying missing criminal information. She explained that Justice has an ongoing process of reviewing its internal process for transmitting RAP sheet information to see whether any parts of the process could be automated. It is critical that Justice transmit criminal history information in a timely fashion, because delays in preparing and sending the RAP sheets cause delays in Social Services' initiation of background checks.

Some RAP sheets may be delayed because Justice researches information from superior courts to make sure criminal history records are complete. Records kept by Justice's Applicant Response Unit indicate that from fiscal years 2013-14 through 2015-16 Justice needed to research further information for 4 percent—or 22,978—of the RAP sheets that it prepared for individuals who were initially fingerprinted for Social Services. State law requires Justice to make a "genuine effort" to determine the final court outcome regarding an arrest—known as a disposition—such as a conviction or dismissal. To fulfill this requirement, Justice identifies instances in which an individual's RAP sheet contains an arrest but no information on the final disposition and researches the court decision to add to the RAP sheet before sending the RAP sheet to Social Services. According to the manager of the unit that performs this work, Justice has access to some courts' case management systems, and for other courts, Justice's staff contact the court by fax or telephone. In addition, according to the chief of Justice's Bureau of Criminal Identification and Investigative Services (investigative services chief), this work can also include researching district attorneys' decisions not to formally press charges. This additional information is valuable because it allows Social Services to accurately determine how to process the criminal history for a background check.

Justice knows that it is not receiving complete information from California's courts for all individuals who commit crimes in the State, but it has not taken adequate steps to address the problem. State law requires the courts to furnish a disposition report to Justice within 30 days of the date of the disposition. Although Justice does not have a statutory requirement to monitor compliance with the law, it is responsible for maintaining complete criminal history information because it is the central repository of this information in California. In an April 2016 letter to California's criminal justice community, Justice acknowledged that there is an information gap, wherein it does not have a corresponding disposition report for up to 40 percent of its arrest records. The letter also states that better and more complete information will improve background checks for employment. Although Justice stated in its April 2016 letter that it would reconvene its criminal

history advisory committee to enhance this data collection, the investigative services chief acknowledged in February 2017 that the committee was not yet reconvened. She explained that from April 2016 to November 2016, Justice had to make plans regarding the subject matter of the committee and who at Justice would be managing the committee meetings. She also stated that Justice plans to reconvene the committee in spring or summer 2017.

Obtaining disposition information in a timely manner is critical to allowing state entities, such as Social Services, to perform their duties more quickly and protect the clients they serve. Our review of RAP sheets Justice provided Social Services for fiscal years 2013–14 through 2015–16 found that two courts provided disposition information to Justice a year or more after they made a final determination. One court submitted conviction information to Justice more than a year after the individual’s conviction related to pimping and carrying a concealed weapon. Because the CBCB was not promptly made aware of these convictions after they occurred in June 2013, the individual was allowed to be present in multiple facilities until the CBCB ultimately learned of these convictions in February 2015, after which it denied the individual’s exemption request. In the case of another individual, a court submitted its information—a theft conviction—to Justice three years after the conviction. This delayed Social Services’ ability to protect the clients in its licensed facilities.

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**One court submitted conviction information to Justice more than a year after the individual’s conviction related to pimping and carrying a concealed weapon.**

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If Justice received disposition information in a timely manner, it could redirect the resources it uses to research this information to one of its other responsibilities. Because of the incomplete disposition records and the need to fulfill the “genuine effort” requirement for all RAP sheets it distributes to entities in California, Justice has staff who research criminal history and update its records. For the one-year period beginning in November 2015, records provided to us by Justice indicate it had 70 staff from two units working to make the criminal history information records for individuals who fingerprinted for a background check complete. From November 2015 through October 2016, based on median salaries and the records Justice provided to us, Justice spent nearly \$1.1 million for staff who worked on completing these criminal history information records. Therefore, if Justice was able to reduce this workload by 30 percent through its outreach efforts, which we discuss later, it could have saved about \$325,000 in the one year for which we reviewed staffing information.

In addition to incomplete reporting by courts, as a result of administrative actions that other departments shared with Social Services, we identified four cases in which law enforcement agencies did not report original arrest information to Justice, as required by state law. Consequently, as of November 2016, Justice was unaware of the original arrests—one from 2009, two from 2014, and one from 2015. Because of this, Justice was unable to provide Social Services—as well as other entities in the State—with the complete criminal history information for these individuals. Having this information would allow Social Services to promptly evaluate these individuals and determine whether they pose a risk to clients of its licensed facilities. In fact, one of these four individuals was arrested for the nonexemptible crime of committing a lewd or lascivious act upon a dependent person. Justice did not know about this arrest and, as a result, neither did Social Services when it cleared the individual to work in a licensed facility for the elderly two months after her arrest. When Social Services finally learned of the individual's related nonexemptible conviction seven months later, it barred her from the facility. Had Justice and Social Services been informed of the arrest when it occurred, Social Services would have investigated the crime and could have decided to deny the individual access to the facility much earlier.

Although law enforcement agencies are required to report arrest information to Justice, according to Justice's assistant bureau chief, Justice does not monitor whether it receives all arrest reports. She stated that she believes the law enforcement agencies are submitting all arrests because the agencies electronically submit the information to Justice. However, she also informed us that Justice has a code that it uses when it receives a disposition with no associated arrest in its records. She stated that Justice believes that many of the dispositions it receives without an arrest are cite-and-release and detention-only situations.<sup>9</sup> However, as discussed previously, arrests that Justice has no record of can also be arrests that Social Services is required to investigate.

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### **Justice does not monitor whether it receives all arrest reports.**

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The fact that Justice has created such a code is recognition that it knows it does not receive all the arrest records that it should have as the central repository of criminal history information for the State. The absence of

<sup>9</sup> In general, cite-and-release situations occur when an individual who is arrested for an infraction or misdemeanor receives a citation—a written notice to appear in court for a violation—with the individual being released upon giving his or her written promise to appear. For detention-only situations, in some circumstances specified in state law, an arrest will not result in a prosecution and the disposition will be deemed a detention only.

monitoring arrest reporting is also problematic because, as shown in the four examples we found, Justice was unaware of the original arrest and therefore did not know that it was missing the corresponding convictions. The lack of complete criminal history information affects all entities that rely on this critical information.

Justice is in a unique position to conduct outreach to the courts and local law enforcement agencies regarding increased and prompt reporting. A deputy attorney general stated that Justice is required to collect, compile, and disseminate information reported by these entities, but has no obligation to ensure that courts and local enforcement agencies comply with their reporting obligations. He further explained that Justice does not have any practical means of ensuring that courts and local enforcement agencies report arrests and dispositions on a timely basis. We disagree. As the recipient of the reported information, Justice is the only entity that is aware of the extent to which courts and law enforcement agencies statewide are reporting and the timeliness of their reporting. Therefore, Justice needs to participate in any effort to identify noncompliance with state law and remind entities that may not be reporting, or may not be promptly reporting, about their obligations. The investigative services chief stated that Justice has regularly informed the Judicial Council of California (Judicial Council)—which is the policy-making body for California’s court system—about the disposition gap.

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**Justice is the only entity that is aware of the extent to which courts and law enforcement agencies statewide are reporting.**

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Justice and the Judicial Council can benefit from working together to remind the courts that state law requires them to report dispositions to Justice within 30 days. In addition, the investigative services chief told us that law enforcement representatives will be participating on the committee it plans to reconvene in 2017. Such a collaboration will ensure that Justice has done all it can to have current criminal history records.

### **Social Services Has Experienced Significant Delays in Processing Exemption Requests**

From fiscal year 2013–14 through 2015–16, the CBCB received annually an average of almost 21,000 RAP sheets containing federal and California criminal history for which it needed to conduct background checks. The amount of time the CBCB takes to make a decision on a background

check file depends on the information included in the RAP sheet, as seen in Table 4. The processing time starts when the CBCB receives the RAP sheet from Justice. The first three processes listed in Table 4 required the least amount of time for criminal history reviews. To complete these reviews, exemption staff rely solely on the information contained in the RAP sheet as the basis for their decision. In contrast, the last CBCB process in the table—standard exemption—takes the most time for the CBCB to complete, on average. To complete this process, the CBCB must evaluate the documents identified in the text box on page 7. As shown in Table 4, the CBCB took between 149 and 170 days on average—roughly five to six months—after it received a RAP sheet to decide whether to grant or deny a standard exemption. Even if we subtract the 45 days that state regulations allow for an individual or facility to submit exemption request documents to Social Services, the exemption process still takes an average of about four months.

**Table 4**  
The CBCB Time to Complete Background Check Cases Varied in Fiscal Years 2013–14 Through 2015–16

CBCB PROCESS	FISCAL YEAR 2013–14		FISCAL YEAR 2014–15		FISCAL YEAR 2015–16	
	NUMBER OF CASES CLOSED	AVERAGE NUMBER OF DAYS TO CLOSE A CASE	NUMBER OF CASES CLOSED	AVERAGE NUMBER OF DAYS TO CLOSE A CASE	NUMBER OF CASES CLOSED	AVERAGE NUMBER OF DAYS TO CLOSE A CASE
Infraction(s) only	918	9	1,103	12	1,639	14
Simplified exemption*	2,122	20	2,913	16	5,580	15
Nonexemptible crime(s)	215	61	290	54	353	65
<b>Standard exemption</b>						
Exemption process halted†	9,159	103	10,373	89	10,885	87
Exemption decision made	3,813	170	4,354	169	4,564	149

Sources: California State Auditor's analysis of data obtained from Social Services' Licensing Information System (LIS) and Caregiver Background Check (CBC) system.

Note: As stated in Table 8 beginning on page 71, we determined that the LIS and CBC system are not sufficiently reliable because of pervasive weaknesses in general controls over Social Services' information systems. However, we present these data in the report because they represent the best source available.

This table does not include all criminal background check cases that Social Services processed. For example, it excludes any case that ended because the individual was no longer associated with any licensed facility, or any case that was closed because the criminal history only included arrest information.

\* The CBCB can grant a simplified exemption only for individuals who have one nonviolent misdemeanor for which the period of incarceration or supervised probation ended five or more years before it received the RAP sheet. In cases of unsupervised probation, five years must have elapsed since the conviction.

† This category includes cases where the case was not completed due to an incomplete application or where the facility or individual licensee did not complete the process.

Since we last audited the background check process in 2000 and again in 2002, the CBCB has eliminated from its policies its goal for the number of days it should take to process a standard exemption.<sup>10</sup> For example, our

<sup>10</sup> California State Auditor reports 2000-102 (August 2000), *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*, and 2002-114 (August 2003), *Department of Social Services: Continuing Weaknesses in the Department's Community Care Licensing Programs May Put the Health and Safety of Vulnerable Clients at Risk*.

2002 audit report identified that the CBCB had a policy that its exemption analysts should make exemption decisions within 60 days of receiving an exemption request. The CBCB does not currently have a formal goal for the amount of time staff should spend making an exemption decision. Additionally, the CBCB now relies on informal time goals for some steps in its exemption process, such as notifying an individual or facility that an exemption is needed, and these informal expectations are not documented in any department policies.

When we asked the chief of the CBCB why her bureau no longer has a formal time goal for making an exemption decision, she stated that she was not aware of the bureau ever having this time frame and did not know why its current policies did not have such a targeted time frame. However, she agreed that it would be a good idea to add time frame goals into CBCB policy or to establish them through a management memo. If the CBCB implemented a goal of finishing exemption cases within a certain number of days, its staff could prioritize the cases they needed to work on, rather than addressing them as documents come in. This approach could potentially lessen the wait time for individuals who do not present a risk. Additionally, a time goal would provide a metric that the CBCB could use to regularly track how long it is taking to complete exemption cases and intervene where necessary.

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**The chief of the CBCB agreed that it would be a good idea to add time frame goals into CBCB policy or to establish them through a management memo.**

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We found that delays in the exemption process occurred for multiple reasons, some of which can be attributed to the CBCB. We reviewed 10 background check cases that the CBCB worked on in fiscal years 2013–14 through 2015–16 that were open for at least six months. Although the exemption process includes time that an analyst is waiting for an exemption request and also can include requests for additional documents from the individual, law enforcement agencies, and courts, we found significant delays in seven of the 10 cases we reviewed, partly due to inaction by the CBCB. In each of these seven cases, a significant amount of time—ranging from 33 to 189 days—passed between the receipt of new information or documents at the CBCB and the next step the analyst took. For example, in one case, although the individual returned his exemption request within the required 45 days, the exemption analyst took six months to begin requesting the necessary law enforcement documents in order to process the exemption. According to the analyst

who worked on this case, the case had been transferred to her, but she did not know precisely when. She also stated that any additional delay in processing the case was due to a large caseload. Several other analysts we spoke with also indicated that a large caseload affected their ability to quickly process exemption requests.

Over the three fiscal years we reviewed, the workload that the CBCB's analysts were assigned fluctuated. For fiscal years 2013–14 through 2015–16, the median number of background check cases an exemption analyst handled in a year ranged from a low of 353 in fiscal year 2013–14 to a high of 695 in fiscal year 2014–15.<sup>11</sup> Table 4 on page 47 shows that the CBCB's average number of days to make exemption decisions decreased over the same three-year period. However, the average number of days to close two of the three types of cases that do not require an individual to submit supporting documentation—those other than standard exemptions—increased in fiscal year 2015–16. This demonstrates that the CBCB's ability to quickly process background check cases is not improving, and the number of cases per analyst suggests that workload levels may be a contributing factor. Nevertheless, until the CBCB establishes expectations for how quickly staff should process cases, it cannot know if its staffing level is sufficient to adequately process the background check cases it receives.

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### **CBCB has not sufficiently monitored the status of many of its cases.**

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The CBCB has not sufficiently monitored the status of many of its cases to ensure that analysts are not neglecting cases. Although the CBCB has not formally established what it considers to be a backlog, the chief of the CBCB informed us that Social Services considers a case open longer than 150 days to be backlogged. Based on this 150-day metric, we determined that more than 2,500 open cases were backlogged as of June 30, 2016. To identify why cases were in the backlog, we looked more closely into cases that had been open more than 400 days as of June 30, 2016, which is when we obtained Social Services' data. The CBCB's database showed more than 1,000 such cases. Of the 1,000 cases, only about 100 had any activity that had occurred in the preceding 200 days.

The chief of the CBCB stated that, from a review of the list of these cases, she felt that conclusions about the status of these cases could not be made based solely on the data for a variety of reasons. She believed that some of

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<sup>11</sup> We chose to use the median, which is the middle value in a series of numbers, due to the extreme outliers in the caseload data. The median, unlike the average, is not affected by outlier values and therefore provides a more realistic picture of analyst caseload.



the data was factually incorrect. For example, she stated that some of the cases the CBCB's database identified as pending had been completed but the database had not been updated to reflect that completion. She also believed that many of these cases had moved into the legal process and that actions taken by Social Services' legal division were not reflected in the data we used to calculate the number of pending cases. The chief of the CBCB stated that this list of pending cases would be used to start a data cleanup effort, but a review of specific cases was required to accurately reflect each case's status.

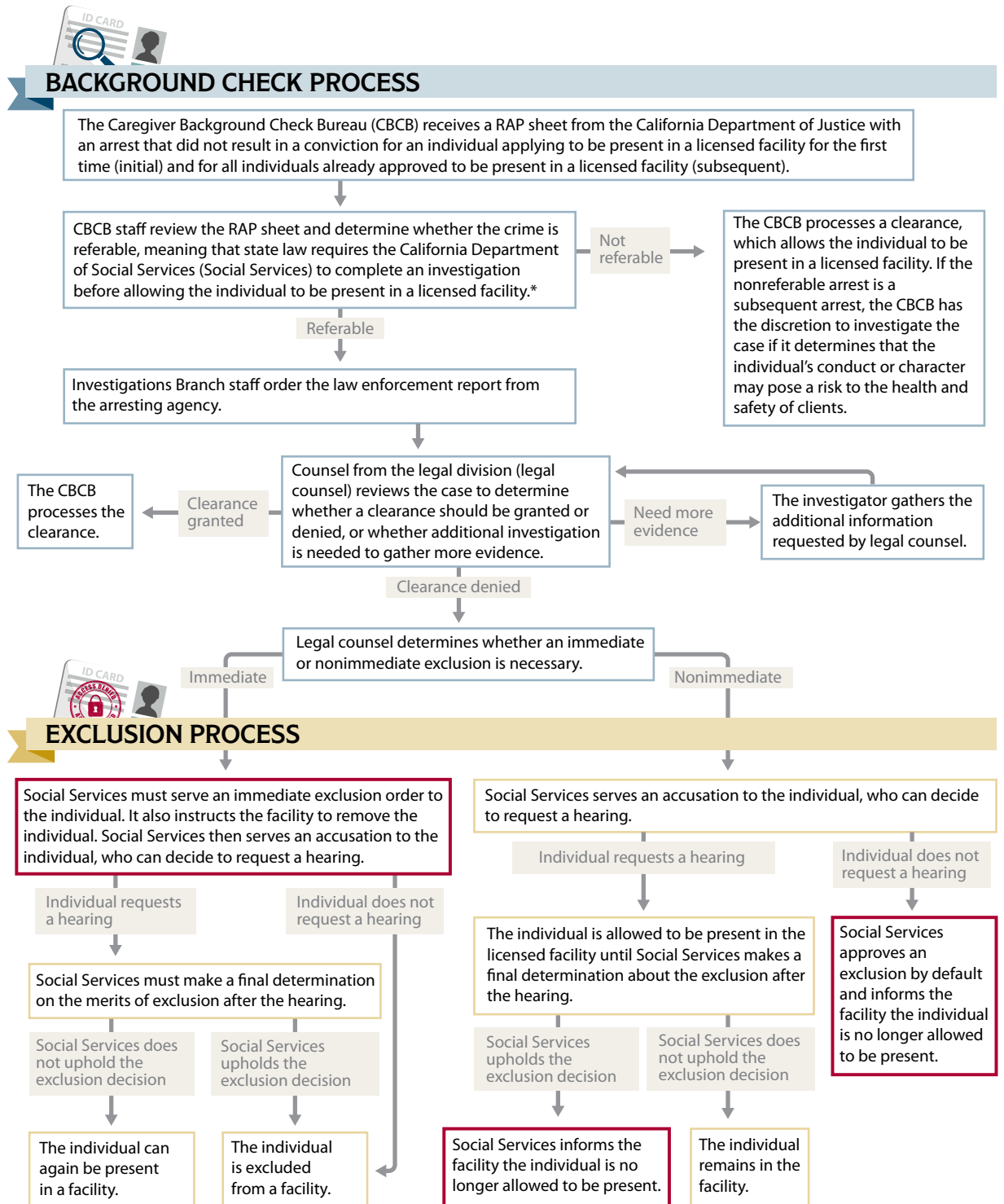
Our review of 10 cases from the backlog demonstrates that, although some cases had circumstances similar to those described by the chief of the CBCB, others were more troubling. We selected five cases with recent activity and five cases that did not have recent activity to review. The CBCB histories for three of these 10 cases indicated that the CBCB received a RAP sheet but did not initiate an exemption or clearance process. Two of these individuals have been present in licensed facilities without adequate background checks for seven and 13 years, and the third has not had an exemption processed for fingerprints she submitted in 2012. The CBCB's assistant chief stated that he could not explain why these individuals' criminal histories were not reviewed, and that the CBCB has begun obtaining relevant documents or processing the necessary exemptions for these individuals. For another of the 10 cases, the CBCB began processing the case in October 2013 but never finalized the review. The other cases we reviewed showed circumstances similar to those described by the chief of the CBCB. We found three cases had been referred to the legal process. Another two cases had been processed but not closed out in the database. Finally, the last case that had been open for more than 400 days was closed in August 2016 during the normal course of processing cases.

### **Arrest-Only Cases Take Longer to Complete Than Social Services' Expected Time Frames**

In contrast to its process for standard exemptions, Social Services has established time frames for processing background check cases for individuals with arrest-only cases in their criminal histories. Figure 6 presents Social Services' processes for conducting background checks and enforcement for arrest-only cases, which it last updated in July 2014. These procedures align with the requirement established by AB 2632 that Social Services complete an investigation before issuing a clearance when an arrest occurs for specific crimes, such as kidnapping and murder. In addition, we found through our review of Social Services' data and a selection of arrest-only cases that Social Services adhered to these policies in fiscal years 2014–15 and 2015–16. As identified in Figure 6, although the background check process starts with the CBCB, staff from both Social Services' legal division and its Investigations Branch may become involved in determining the risk an individual with an arrest-only history presents to licensed facility clients.



**Figure 6**  
Overview of the Arrest-Only Background Check and Exclusion Processes



Red boxes indicate the point in the process at which an individual will be removed from a licensed facility.

Sources: California State Auditor's analysis of Social Services' policies, state law, selected arrest-only cases we reviewed, and interviews with Social Services' staff.

Note: If at any time in this process an individual's arrest results in a conviction, the investigation process is over and the case is routed back to the CBCB for evaluation of the conviction. We show this process in Figure 2 on page 8.

\* If a trial is pending for an individual applying to be present in a facility for the first time, the CBCB stops processing the case. The CBCB takes no further action unless the individual resubmits fingerprints after the conclusion of criminal proceedings.

As shown in Table 5, we determined that Social Services did not always meet its time frames for processing arrest-only cases during fiscal years 2014–15 through 2015–16. For example, the legal division did not always meet its three-business-day goal for completing legal triage, which is the process of assessing whether to further investigate, clear, or deny clearance for an arrest-only case. Our review found that in 480 of the 4,061 arrest-only background check cases, or nearly 12 percent, legal triage took between four and 15 business days. According to the primary attorney responsible for legal triage, the process sometimes took longer than three business days because she was also assigned other cases that took priority over triage. The attorney stated that, to address this issue, her supervisor reassigned those other responsibilities in June 2016 so that she would not be pulled away from legal triage work. She also stated that Social Services had received funding to dedicate more staff to legal triage. As shown previously in Figure 6, the legal unit's input can lead to a decision that an individual must be immediately excluded from a licensed facility. Therefore, swift decisions are essential.

To determine why some arrest-only cases exceeded Social Services' expected time frames, we reviewed 10 arrest-only background check cases from fiscal years 2014–15 and 2015–16 that took a significant amount of time for Social Services to complete. Although Table 5 shows that delays also occur when Social Services makes and finalizes its decision, our testing of the 10 cases found that delays occurred primarily at the stages of identifying the case as arrest-only and investigating the arrest. For example, Social Services expects staff to conduct a preliminary review of the RAP sheet within one day, but staff took between three and 46 days to review the RAP sheet in four of the 10 cases we reviewed. In two of these four cases, Social Services took more than 40 days to conduct a preliminary review of the RAP sheet and identify that the background check should follow the arrest-only process.

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**Delays occurred primarily at the stages  
of identifying the case as arrest-only and  
investigating the arrest.**

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For one of these two cases, the RAP sheet had an error that prevented the CBCB from knowing what facility the individual wanted to be associated with, and therefore prevented the CBCB from beginning to work on the case. For the second case, the chief of the CBCB explained that the RAP sheet did not automatically populate in the electronic system when the CBCB received it, and the CBCB did not identify the case as arrest-only until after it received a second RAP sheet with the same arrest information. The chief stated that Social Services will look into why the RAP sheet did not automatically populate the way it should have.

**Table 5**  
**Social Services Did Not Always Meet Its Time Frames for Processing Arrest-Only Cases**

KEY STEPS IN THE PROCESS	CBCB PROCESSING GOAL (IN DAYS)	FISCAL YEAR 2014-15*					FISCAL YEAR 2015-16				
		NUMBER OF CASES	AVERAGE NUMBER OF DAYS	NUMBER OF CASES EXCEEDING THE GOAL	PERCENTAGE OF ALL CASES THAT EXCEEDED THE GOAL	RANGE OF DURATIONS FOR CASES EXCEEDING THE GOAL (IN DAYS)	NUMBER OF CASES	AVERAGE NUMBER OF DAYS	NUMBER OF CASES EXCEEDING THE GOAL	PERCENTAGE OF ALL CASES THAT EXCEEDED THE GOAL	RANGE OF DURATIONS FOR CASES EXCEEDING THE GOAL (IN DAYS)
Calendar days from receiving RAP sheet to ordering of arrest report	6	2,208	5	244	11%	7 to 541	1,762	8	298	17%	7 to 174
Calendar days from ordering of arrest report to receipt	30	2,292	22	579	25	31 to 305	1,766	23	417	24	31 to 402
Business days from legal triage start to finish	3	2,312	2	261	11	4 to 13	1,749	2	219	13	4 to 15
Calendar days from investigation start to finish	30	717	61	438	61	31 to 428	793	72	512	65	31 to 568
Business days from obtaining all information needed to final legal recommendation	3	2,172	4	693	32	4 to 171	1,812	7	782	43	4 to 361
Business days from legal recommendation to CBCB final decision	2	2,007	5	1,226	61	3 to 120	1,664	4	982	59	3 to 251
Business days from CBCB final decision to CBCB final action	5	2,020	3	211	10	6 to 65	1,655	2	13	1	6 to 127

Sources: California State Auditor's analysis of data obtained from the Social Services' Arrest-Only and Mixed RAP (RAP sheets with arrests with no conviction and separate convictions) spreadsheets, interviews with Social Services' staff, and Social Services' arrest-only procedures.

Note: As stated in Table 8 beginning on page 71, we determined that these tracking data are not sufficiently reliable because of pervasive weaknesses in general controls over Social Services' information systems. However, we present these data in the report because they represent the best source available.

\* We examined cases from fiscal years 2014-15 and 2015-16 because Social Services updated its arrest-only background check procedures for arrest-only cases in July 2014.

As we show in Table 5, the length of Social Services' investigations exceeded its 30-day goal for the majority of the investigations it conducted for arrest-only cases in fiscal years 2014–15 and 2015–16. In the 10 cases we reviewed, we observed that the lengthiest portion of the arrest-only background check process was generally the investigation of arrests to determine whether the individual would pose a risk to clients in licensed facilities, which Social Services expects should take 30 days. Although we found that Social Services' delays in completing most of these investigations were reasonable because investigators were actively working on the investigation, we identified four cases in which Social Services could not demonstrate that the delays in the investigations were reasonable. For three of these cases, in which the investigation took between 37 to 186 days to complete, the investigator had retired, and in each case the investigator who took over the case or the retired investigator's supervisor could not identify from the case files why the investigations took so long to complete. For the fourth case, which took 93 days to investigate, the investigator stated that after a discussion with her manager her cases were not reassigned while she took personal leave, because other investigators' caseloads were already large and doing so would possibly have delayed their cases as well. We believe that, in this instance, Social Services should have reassigned the cases in the investigator's absence. According to the assistant chief of the Investigations Branch, in October 2016 the Investigations Branch implemented new procedures and redistributed its workload to help reduce the length of arrest-only investigations. These procedures include timelines for when to complete certain elements of the investigation and emphasize that investigators should not "hold on" to cases when they have not made progress in the investigation.

### **Social Services Does Not Appropriately Follow Up to Verify That Excluded Individuals Are No Longer Present at Facilities**

As previously discussed, if its legal staff decides Social Services should deny an individual the ability to be present in a licensed facility because of an arrest on his or her RAP sheet, Social Services can choose to pursue an immediate exclusion. We reviewed six immediate exclusions from fiscal years 2013–14 through 2015–16 that appeared to take Social Services a substantial amount of time to complete. Although the legal process to finalize some of the exclusions took a substantial amount of time, we determined that Social Services issued an immediate exclusion order within five business days of the final legal recommendation.

However, Social Services' policy requires that a regional office follow up with the facility within 30 days of the issuance of an exclusion order to verify that the excluded individual is no longer in the facility.

The policy states that the verification will most often require a visit to the facility but may be obtained by other means if approved by a manager. Of the six cases we reviewed, Social Services conducted a facility visit in only two instances to verify that the individual was no longer in the facility. For two other cases, the regional office completed the verification through a telephone call. According to regional office staff, a manager over one of these cases approved the telephone call but did not document the approval.

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**Policy requires that a regional office follow up with the facility within 30 days of the issuance of the exclusion order.**

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In the second case, a regional office analyst told us there is no documentation of the manager's approval allowing the exclusion verification to take place with a telephone call rather than a facility visit. However we do not consider verification by telephone call to be sufficient. For example, in this case the regional office made the verification call on the same day as the service took place for the order of immediate exclusion, and the regional office confirmed only that the executive director of the facility would remove the individual, not that the removal had actually taken place.

For the final two of the cases we reviewed for follow-up, Social Services did not take action to verify that the excluded individuals were not in the facility. In one of these cases, an individual who worked in a group home that provides residential counseling for adolescents in crisis situations was arrested for assaulting his girlfriend. After Social Services served an immediate exclusion, the regional office did not verify that the individual was no longer present in the facility. According to the regional manager, the regional office did receive an email from the facility stating that the individual was no longer present in the facility; however, the email was not printed to keep in the facility's file and the regional office no longer has the email. The regional manager further stated that it is not her region's practice to confirm exclusion actions from the CBCB with a site visit if the facility emails or faxes the regional office to say that the individual is no longer present, because both the facility and the individual receive the exclusion order. This practice is contrary to Social Services' policy, which states that exclusion verification will "most often" require a facility visit and may only "sometimes" be obtained by other means.

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### **Regional offices did not always verify that the excluded individual was no longer present in the facility.**

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In the second case, the excluded individual was the son of a family child care home operator who was arrested for a variety of abusive actions against minors. The regional manager for this case stated that the regional office likely did not verify that the individual was not in the facility because of an unfortunate staff oversight. He explained that making facility visits to verify that excluded individuals are no longer present is a priority for his regional office and that making a visit for this case must have been accidentally missed by staff. According to the deputy director of the Licensing Division, after we raised concerns about the exclusion verification process, the division developed a task force to develop a standardized process for all regional offices to follow to verify that excluded individuals are not in licensed facilities. The task force met for the first time in early February 2017.

#### **Some Delays in Exclusion Processes Are Avoidable**

In some cases, Social Services takes legal action to finalize either exemption denial or exclusion decisions it has already made. It does this when an individual appeals the CBCB's decision to deny his or her exemption request and also when Social Services decides to exclude an individual at the conclusion of an arrest-only investigation, as shown previously in Figure 6 on page 51. These actions can result in an individual being excluded from licensed facilities for a significant amount of time, up to and including the remainder of the individual's life. We reviewed 17 cases related to excluding individuals from licensed facilities for which Social Services finalized an exclusion or exemption denial.

We observed that a portion of the time spent to complete the legal action on these cases was due to delays within the department's control. For exclusions made after arrest-only investigations as well as exemption denial appeals, the CBCB is responsible for preparing a summary of relevant details of the case (statement of facts) and providing it to the legal division. We determined that for six exclusion cases resulting from arrest-only investigations, the CBCB took between four and 25 days to provide the statement of facts to the legal division, exceeding the two calendar days required by CBCB policy. The manager of the CBCB's arrest-only unit explained that only one staff member processes statements of facts

to provide to the legal division for arrest-only cases and, due to the high volume of cases and limited availability of the staff member, there can be a backlog of cases waiting to go to the legal division.

We also observed that some of the delay in these legal cases was due to the amount of time it took the legal division to serve the individual a statement of the acts or omissions the individual was charged with—known as an accusation—so that the individual could prepare a defense. A Social Services memo states that the legal division expects its attorneys to file an accusation within 120 days of the division's receipt of the case. However, we observed that the legal division took between 126 and 573 days to file an accusation for 12 of the 17 exclusion and exemption denial cases we reviewed. For two exemption denial appeals, the legal division took more than one year to file the accusation, and for a third it took nearly one year to do so.

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**The legal division expects its attorneys to file an accusation within 120 days of the division's receipt of the case.**

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When we inquired about the delays in filing accusations in these cases, attorneys provided various explanations. Two attorneys stated that they did not file the accusation within 120 days of when the legal division received the case because there was a delay between the legal division's receipt of the case and the case being assigned to them. According to a senior assistant chief counsel, once a case is received by the legal division, it generally takes about three to four weeks—21 to 28 days—for it to be assigned to an attorney. He attributed the delay to the fact that the division has only one intake analyst and stated that Social Services was working on redirecting resources to shorten the intake process. Attorneys also indicated that their caseloads and other higher-priority cases prevented them from filing accusations in a timely manner for some of the cases we reviewed.

Attorneys also identified that the delays in filing the accusations were due to waiting to receive additional law enforcement and court documents. However, for two of the six cases in which the attorney attributed the delay to time spent waiting for additional documentation, we did not find evidence in the case file that the legal division actively solicited additional documentation for the duration of the delay. For example, in one case in which the



legal division took about a year to serve the accusation, there is no evidence in the case file that the legal division either requested or received additional documents for nearly six months. The senior assistant chief counsel over legal enforcement acknowledged that there were some gaps in requests in these two cases, although he stated it was likely that additional requests had been made by telephone or fax but had not been documented.

As a result of delays in serving accusations that occur within its control, Social Services is preventing individuals from receiving a timely assessment of their case, which could find them not a risk to individuals in care facilities and allow them to be present in licensed facilities. The legal process for exclusions and exemption denials allows the individual to appeal Social Services' decision to not allow that individual to be present in a licensed facility, which can ultimately result in the overturning of Social Services' initial decision. For example, in one of the exemption denial cases we reviewed, at the conclusion of the legal process Social Services ultimately granted the individual a conditional exemption to work in a licensed facility.

### **Social Services' Headquarters Does Not Track the Status of Some Legal Actions**

Social Services' headquarters does not monitor the timeliness of its regional offices' legal actions to exclude registered sex offenders from licensed facilities. According to its procedures, Social Services' headquarters is responsible for matching the addresses of registered sex offenders with licensed facilities, and it assigns matched addresses to the appropriate regional field offices to investigate. If the investigation determines that the registered sex offender resides in the facility, the investigator serves the registered sex offender and the facility an order of exclusion and informs the appropriate Social Services regional office of the outcome of the investigation. The regional office is then responsible for immediately beginning the legal action process.

Social Services uses a spreadsheet to track its matches and the results of field office investigations of registered sex offenders. However, the spreadsheet does not accurately reflect the status of the regional offices' legal actions. We reviewed the only two cases between January and May 2016 in which Social Services determined that a registered sex offender was present or resided in a licensed facility, both of which occurred in April 2016.<sup>12</sup> In July 2016, the

<sup>12</sup> We reviewed cases from between January and May 2016 because we determined that Social Services' Licensing Division had fully implemented two recommendations from our previous audit related to matching and tracking the addresses of registered sex offenders based on its December 2015 response to the recommendations.



spreadsheet did not show the current status of these two actions. Instead, it indicated that the initial legal action to revoke the facility's operating license for one case was still in progress, and it did not identify the status of the legal action for the other case.

For both of these cases, the field offices ensured that the registered sex offenders knew they were no longer allowed to be present at the licensed facility. One regional office manager explained to us that it did not pursue legal action immediately because the registered sex offender was no longer a risk because the licensed facility closed and, therefore, was not a top priority. The other regional manager explained that her office needed to discuss the case with legal counsel and that the regional office made a site visit to confirm that the registered sex offender was no longer in the facility. The Licensing Division's deputy director stated that headquarters does not track the regional offices' legal actions because the regional offices are ultimately responsible for tracking these cases for their geographic regions. However, because headquarters is responsible for matching the addresses of registered sex offenders to licensed facilities and tracking the results of the investigations, it would be a logical next step for it to ensure that the regional offices pursue the necessary legal actions. Without such tracking, Social Services lacks assurance that the regional offices have fulfilled their responsibility to take legal actions against registered sex offenders present in licensed facilities. If Social Services had monitored the regional offices, it would have been aware that these legal actions were not moving forward and could have followed up with the regional offices to make sure they fulfilled their responsibility in these cases.

## **Recommendations**

### ***Justice***

To ensure that Social Services receives criminal history information within 14 days of receiving an individual's fingerprint information, as state law requires, by July 2017 Justice should analyze its process, including delayed transmissions, implement changes to address problems it identifies, and regularly measure itself against the requirement to determine whether it is meeting its statutory requirement.

To ensure that it has complete disposition information, Justice should coordinate with the Judicial Council at least once a year to share information about court reporting gaps and to determine the need to distribute additional information to courts about reporting requirements and the manner in which to report. In addition, Justice should reconvene its advisory committee and meet on a

regular basis to discuss, at a minimum, improving the frequency and timeliness with which courts report dispositions to Justice and law enforcement agencies report arrest information to Justice.

To ensure that it is receiving all arrest information from law enforcement agencies, at a minimum, Justice should consider trends in the number of arrest reports each law enforcement agency sends it and the number of reports that it might expect to receive from an agency given the agency's size, location, and reporting history. Whenever Justice identifies a law enforcement agency that it determines may not be reporting all required information, it should request that the agency forward all required arrest information.

### ***Social Services***

To ensure that Social Services processes criminal history reviews and legal actions as quickly as possible so that delays do not impede individuals whose presence in a licensed facility would pose no risk, by July 2017 the department should establish formal time frames and monitor the stages of the following processes against those time frames:

- **Exemption process:** At a minimum, Social Services should establish time frames for notifying individuals and facilities that a criminal history exemption is required, evaluating information it receives, and making decisions on exemptions. As part of monitoring, Social Services should identify when cases become backlogged and work to swiftly conclude those exemption reviews. In addition, if it determines that its staffing levels are insufficient to meet its time frames, it should seek additional resources.
- **Legal process:** At a minimum, Social Services should establish time frames for assigning cases to attorneys. Further, it should regularly monitor itself against the 120-day time frame for serving an accusation after the legal division receives a case.

To ensure that it can accurately monitor its pending cases, by May 2017 Social Services should develop a work plan to identify and address its exemption process backlog by September 2017. At a minimum, the work plan should include reviewing the cases its database identifies as open without activity 150 days after receiving a RAP sheet and closing the cases in its database where Social Services already performed its final exemption decision action.

To ensure that Social Services processes arrest-only cases as quickly as possible, it should immediately follow its arrest-only and investigation policies, and monitor against those time frames for the various stages of the process.

To ensure that its regional offices consistently verify that excluded individuals are no longer present at licensed facilities, at a minimum, Social Services should immediately revise its policy to require that regional offices conduct site visits after it issues exclusion orders. In addition, it should formalize the verification process it develops in its procedures, train all regional offices, and monitor compliance with the process.

To ensure that regional offices pursue legal actions in a timely manner, by July 2017 Social Services' headquarters should identify a resource—such as a unit—to monitor and follow up with the regional offices regarding the status of their legal actions related to substantiated address matches of registered sex offenders at licensed facilities.

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## OTHER AREAS WE REVIEWED

To address the audit objectives that the Joint Legislative Audit Committee (Audit Committee) approved, we reviewed the subject areas in Table 6. In the table, we indicate the results of our review and any associated recommendations we made that are not discussed in other sections of the report.

**Table 6**  
Other Areas Reviewed as Part of This Audit

Outdated Background Check Procedures
<ul style="list-style-type: none"> <li>• Social Services has not formally updated the background check section of its procedures manual since 2012. Since the last update in 2012, the CBCB has developed additional procedures that the chief of the CBCB states are communicated to staff through emailed memos. As a result, the procedures manual contains incomplete guidance for tasks related to background checks.</li> <li>• Because guidance about new procedures is not included within the procedures manual, staff may have a difficult time determining what procedures to follow. For example, the procedures manual does not describe how to remove a condition, such as a restriction on transporting clients, from a conditional exemption. Instead, directions for when to remove a condition from an exemption are located within a training document. As a result, new staff relying on the procedures manual may not be aware of these updated procedures.</li> <li>• According to the chief of the CBCB, the CBCB has been working on updating its procedures manual, which provides a self-contained resource for the application and enforcement of laws, policies, and procedures, since about the beginning of 2015. The procedures manual is not a CBCB-specific guide, because it is also used by regional offices. She explained that because it is a shared document, CBCB-specific policies, such as how to remove a condition from a conditional exemption, will not be included as a part of the update.</li> <li>• After AB 2632 went into effect in January 2015, Social Services modified its process for addressing arrest-only cases for both initial and subsequent arrests. As a result, the CBCB has multiple procedure documents for processing arrest-only cases. Although Social Services has documented its process for addressing initial arrest-only cases, it has not done so for subsequent arrest-only cases. The assistant chief of the CBCB agreed that there are slight differences to how subsequent arrest-only cases are handled and therefore it would be beneficial to document the process for subsequent arrest-only cases.</li> </ul> <p><b>Recommendations</b></p> <p><i>The CBCB should update its procedures manual so that it is a centralized document that staff are able to use for the most up-to-date guidance in performing their duties. In addition, the CBCB should update the CBCB-specific policies and combine them into a centralized document.</i></p> <p><i>To ensure that its procedures are consistent and clear, Social Services should update its arrest-only case procedures and document its process for addressing subsequent arrest-only cases.</i></p>

continued on next page...

### The CBCB Does Not Offer Training to Its Exemption Analysts Frequently Enough

- According to the chief of the CBCB, the CBCB does not have an established training schedule.
  - Instead, she explained that CBCB conducts trainings for new employees on a flow basis and has conducted an additional training on how to develop exemption decision summaries for exemption analysts approximately once every two years since 2010.
  - The CBCB has begun to conduct “refresher” trainings for its exemption analysts. However, according to the chief of the CBCB, as of December 2016 it had conducted only one session. This training covered a discrete portion of the exemption process related to appeals of exemption decisions, rather than the exemption decision-making processes or day-to-day responsibilities. The CBCB has now scheduled additional refresher training sessions.
  - The chief of the CBCB stated that the CBCB had not previously held refresher trainings because no one had asked for or identified a need for such training.
- According to the manager of the arrest-only unit, the CBCB created a unit of analysts to process arrest-only cases at the beginning of 2015. However, he stated that as of September 2016, the unit had not conducted formal training for analysts who work on arrest-only cases.
  - After we inquired about formal arrest-only unit trainings in the beginning of September 2016, the manager of the arrest-only unit conducted an arrest-only process training for his unit. Although this training provided an overview of the arrest-only process, it offered minimal guidance to the arrest-only analysts on how to process cases. For example, it did not address how staff should process subsequent arrest-only cases.
  - According to the arrest-only unit manager, he had not provided formal training to the unit earlier because his focus had been on updating and ensuring that the arrest-only procedures were correct. He further stated that he intends to develop and hold trainings on additional aspects of the arrest-only process in the future.

#### **Recommendations**

*The CBCB should follow its new schedule for its refresher training sessions on the exemption process and continue to offer sessions as managers or staff identify a need.*

*The CBCB's arrest-only unit should develop and periodically conduct trainings on the aspects of the arrest-only process for which its analysts have not yet received training.*

### The CBCB Is Unable to Locate Some Exemption Files

- The CBCB's policy requires that all exemption files and supporting documentation for individuals working in a facility be retained indefinitely. The policy additionally requires that all exemption files and supporting documentation for individuals who are not working in a facility be retained for five years and archived for an additional 15 years after the subject is no longer associated with a facility. The CBCB additionally has a policy for how to package files it sends to the California State Archives (State Archives). The CBCB maintains the last three years of records in its office. Older files are stored in the State Archives.
- Throughout the course of our audit, the CBCB was unable to locate several files that we selected for review.
  - The CBCB was unable to locate one file, which it confirmed it should have maintained in its file room. According to the analyst who worked on this case, the file was likely improperly filed in the file room.
  - The CBCB was unable to locate nine additional files in the State Archives. According to the chief of the CBCB, the State Archives is responsible for storing cases the CBCB sends to it and for finding these files when requested; therefore, the files are not within the CBCB's scope of control.
- According to the chief of the CBCB, in December 2016, the CBCB used to rely on the file management and archiving knowledge of an analyst who retired about two years ago. Since then, the CBCB has used procedures that the retired analyst drafted before retiring. She further stated that multiple clerical staff members are responsible for filing cases in the file room.
- The chief of the CBCB stated that in 2017 the CBCB plans to hire additional clerical staff and to designate one individual to be responsible for ensuring that the files in the file room are in the appropriate place and filed correctly.

#### **Recommendation**

*The CBCB should implement its planned changes for ensuring that files in the file room are in the appropriate place and filed correctly.*

### Social Services Funds the Background Check Process Using the State's General Fund and Various Grants

- When an individual is fingerprinted for a background check, he or she pays a criminal history processing fee to Justice and the FBI. State law also allows the local agency that fingerprints the individual to charge a fee to cover the costs of taking the fingerprints and processing the required documents. Social Services, on the other hand, does not receive any funds from fees individuals pay to submit fingerprints for the background check process. Instead, records provided by Social Services show that it pays for the background check process through the programs that require background checks and a federal grant.
- In fiscal year 2015–16, the Senior Care Program paid about 48 percent of its background check expenditures using the State's General Fund money, while the Adult Care and Children's Day Care programs each paid about 26 percent of these expenditures using the General Fund. The Senior Care, Adult Care, and Children's Day Care programs pay the remaining portions of the background check expenditures using special funds and grants. Although the Foster Care Program pays for background check expenditures using similar funding sources, we were unable to perform a similar in-depth review of the program because Social Services does not track its expenditures with the level of specificity needed to conduct the analysis.

#### Social Services Had Incomplete Nonexemptible Crimes Guidance

- Social Services maintains guidance for its staff that identifies all nonexemptible crimes. We found that this guidance was missing two nonexemptible crimes—assault resulting in death, comatose state, or paralysis of a child under eight, and human trafficking. State law prohibits Social Services from granting an exemption to individuals convicted of nonexemptible crimes. Therefore, Social Services risked that its staff would permit individuals with nonexemptible criminal histories to be present in licensed facilities. After we notified the CBCB of the missing nonexemptible crimes, the CBCB updated its guidance to include the two missing nonexemptible crimes in late October 2016.
- From fiscal years 2013–14 through 2015–16, Justice provided Social Services one RAP sheet that included one of the two missing nonexemptible crimes. We reviewed the individual’s case file and found that Social Services did not allow this individual access to a facility.
- We additionally found that as of September 2016, Social Services’ nonexemptible crimes guidance included an outdated reference to repealed statutes. After we brought this issue to Social Services’ attention, it updated the nonexemptible crimes lists to include the new statutes for the repealed codes in October 2016.

#### We Did Not Identify Issues with Social Services’ Investigation of Matched Registered Sex Offenders’ Addresses

- We did not identify any issues with the timing of Social Services’ matches and how it substantiates matches between licensed facility and registered sex offender addresses.
- We evaluated Justice’s process to provide Social Services with sex offender address data. We found that Justice provides Social Services access to all active sex offender addresses. Each month, Social Services’ Information Systems Division is responsible for comparing the registered sex offender addresses from Justice’s California Sex and Arson Registry application to several departmental databases. From January through May 2016, the Information Systems Division performed this action each month and provided the appropriate results to the Investigations Branch in a timely manner. We reviewed cases from between January and May 2016 because we determined that Social Services’ Licensing Division had fully implemented two recommendations from our previous audit related to registered sex offender address matching and tracking based on its December 2015 response to the recommendations.
- We determined that the Investigations Branch’s tracking document for registered sex offender address matches was complete. Additionally, we determined that the Investigations Branch’s tracking document contained a disposition for each address match, indicating whether the Investigations Branch determined that the registered sex offender was not in a licensed facility—or screened out—or investigated each match. If the Investigations Branch investigated the match, the disposition indicated the results of the investigation.
- We reviewed six of the Investigations Branch’s matches for licensed facilities and registered sex offenders from January through May 2016, including the only two address matches for which the Investigations Branch determined that a registered sex offender was present in the facility. We determined that the Investigations Branch appropriately screened out or investigated all six address matches.

Sources: California State Auditor’s analysis of Justice’s and Social Services’ records and interviews with key staff members about the subject areas identified in the table.



## SCOPE AND METHODOLOGY

The Audit Committee directed the California State Auditor (State Auditor) to review Social Services’ background check procedures. Specifically, we were directed to review Social Services’ procedures, training, and funding; the timeliness of the background check process; its efforts to resolve instances involving address matching of registered sex offenders and its licensed facilities; and the information Justice is sending to Social Services as a part of the background check process. Table 7 lists the objectives that the Audit Committee approved and the methods used to address those objectives.

**Table 7**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant state laws and regulations.
2 Assess whether Justice is sending all of the necessary and appropriate information to Social Services as a part of the background check performed by the Licensing Division.	<ul style="list-style-type: none"> <li>• Reviewed state law and Justice’s procedures for disseminating criminal history information. Interviewed Justice staff to obtain their perspective on the reasons for omitting information from RAP sheets Justice provided to Social Services.</li> <li>• Haphazardly selected 10 RAP sheets for applicants during fiscal years 2013–14 through 2015–16 from the CBCB and obtained the RAP sheets for these individuals from Justice. Selected three additional individuals who were initially fingerprinted during the same period and for whom Social Services received an FBI RAP sheet.</li> <li>• In cases where Justice omitted information from these RAP sheets, determined whether the removal was appropriate. Reviewed whether there was any information Justice should have omitted from the RAP sheets it provided to the CBCB.</li> <li>• Interviewed Justice staff to assess what registered sex offender data it provides Social Services.</li> </ul>

*continued on next page ...*

AUDIT OBJECTIVE	METHOD
<p>3 For the most recent three fiscal years, evaluate the timeliness of the background check process, including the Licensing Division's CBCB's criminal history reviews and decisions. If this process is not timely or backlogs exist, determine the cause for this condition, including whether staffing levels are a contributing factor.</p>	<ul style="list-style-type: none"> <li>• Identified guidelines for the timeliness of processing exemption cases, including any necessary legal action contained in laws, regulations, department policies and procedures, and informal guidance.</li> <li>• Judgmentally selected 10 individuals whose exemption cases lasted over six months and were open from fiscal years 2013–14 through 2015–16, including five cases that ended in legal action.</li> <li>• Analyzed the timeliness of the 10 cases against the criteria as available to determine whether the length of the case was reasonable.</li> <li>• Used data from Social Services' databases—Licensing Information System and Caregiver Background Check system—to calculate the timeliness of key activities related to the CBCB's background check processes. In this analysis, we evaluated the CBCB review activities that occurred between the date Social Services received the licensees' criminal history from Justice and the date the CBCB first made a determination on an individual's ability to be present in a licensed facility. Further, we evaluated CBCB activity during the period for which the individual was associated with at least one licensed facility. Thus, we did not evaluate the timeliness of other CBCB review activities, such as reviewing criminal histories associated with other programs for which the CBCB performs background checks, or reviewing clearance transfer requests for individuals to move between licensed facilities.</li> <li>• Selected 10 open cases that had been initiated over 400 days before we obtained Social Services' data and reviewed the case information to determine whether they were active cases or still open due to CBCB error.</li> <li>• Determined an amount of time after which an open CBCB case would be considered a backlog and determined the size of CBCB's backlog based on that amount of time.</li> <li>• Reviewed caseload size for analysts.</li> <li>• Interviewed relevant staff to obtain their perspectives on various issues we found.</li> </ul>
<p>4 Determine whether Social Services has provided clear policies and procedures and adequate training for those involved in the background check process, including the granting of exemptions.</p>	<ul style="list-style-type: none"> <li>• Reviewed the CBCB's procedural flowcharts and <i>Evaluator Manual</i> and interviewed relevant staff to evaluate whether the CBCB has procedures for the different aspects of its exemption process.</li> <li>• Reviewed Social Services' lists of nonexemptible crimes and state law to determine whether its lists contained all of the crimes state law identifies as nonexemptible.</li> <li>• Reviewed the adequacy of the training materials for the CBCB's exemption and arrest-only processes and interviewed relevant staff. Although we generally found the training for CBCB's exemption and arrest-only processes to be adequate, as we discuss in Table 6 on page 64 we believe the CBCB is not conducting training frequently enough.</li> </ul>
<p>5 Evaluate whether Social Services has developed and implemented a policy, and associated training, for receiving and appropriately responding to notices of criminal history received after the initial background check.</p>	<ul style="list-style-type: none"> <li>• Evaluated the thoroughness of the CBCB's policies and procedures for processing notices of criminal history received subsequent to the initial background check.</li> <li>• Reviewed the CBCB's training documents and evaluated their adequacy for processing subsequent arrest and conviction RAP sheets. Although we generally found the training for processing subsequent conviction RAP sheets to be adequate, as we discuss in Table 6 on page 64, we believe the CBCB is not conducting this training frequently enough and has not offered training on subsequent arrest RAP sheets.</li> </ul>
<p>6 Determine whether Social Services has established, and is adhering to, reasonable time frames for conducting initial and, if necessary, follow-up investigations and removing from its licensed facilities individuals found to have prohibited criminal history.</p>	<ul style="list-style-type: none"> <li>• Identified guidelines for the timeliness of processing arrest-only cases, which are the only background check process for which Social Services conducts investigations, including exclusion actions contained in laws, department policy, and informal guidance. Determined the expected number of days it should take the CBCB to process initial and subsequent arrest-only cases, including the expected number of days to complete both immediate and nonimmediate exclusions.</li> <li>• Judgmentally selected 10 arrest-only cases that exceeded the expected number of days for processing arrest-only cases from fiscal years 2014–15 through 2015–16 and evaluated the causes of the delays for the 10 cases.</li> <li>• Judgmentally selected six arrest-only cases that resulted in an immediate exclusion and six arrest-only cases that resulted in a nonimmediate exclusion from fiscal years 2013–14 through 2015–16. Evaluated the cause of any delays for these 12 cases.</li> <li>• Interviewed relevant staff for their perspective on the delays we observed in these cases.</li> </ul>

AUDIT OBJECTIVE	METHOD
7 Determine the status of Social Services' efforts to detect and resolve instances where the addresses of registered sex offenders match the addresses of some of its licensed facilities.	<ul style="list-style-type: none"> <li>Identified the status of Social Services' implementation of the recommendations in the 2015 report by the State Auditor regarding registered sex offender matching.</li> <li>Reviewed the detection and investigation efforts of the Investigations Branch for registered sex offender address matches to licensed facilities.</li> <li>We did not audit other programs, such as the Children and Family Services Division and the two California counties that conduct their own investigations for complaints regarding family child care homes, discussed in the State Auditor's 2015 report, because either Social Services had not yet implemented the related recommendation and, as required by state law, must continue to report on the status of the implementation of the recommendation to the State Auditor, or Social Services is not responsible for conducting the associated investigations.</li> </ul>
8 Evaluate Social Services' responses to individuals who do not provide required records.	<ul style="list-style-type: none"> <li>Reviewed the CBCB's policies to determine what actions exemption analysts are supposed to take to obtain documents from individuals who must obtain an exemption.</li> <li>Judgmentally selected four letter templates that the CBCB issues to individuals who must obtain an exemption and evaluated how closely the templates align with CBCB policies and state law. We looked at multiple templates to evaluate whether the templates place different requirements on the individuals or facilities, depending on the individual's subsequent conviction.</li> <li>Determined how much money Social Services pays for law enforcement reports and court documents it obtains on behalf of individuals requesting exemptions or clearances.</li> <li>Judgmentally selected 10 cases—five exemption cases and five subsequent exemption cases—in which Social Services requested information from individuals for an exemption. Determined what Social Services' response was if those individuals submitted either incomplete or no information. Interviewed relevant staff to obtain their perspective on these cases.</li> <li>Reviewed 29 exemption cases from fiscal years 2002–03 through 2015–16 to determine whether the CBCB attempted to obtain documents that it also asked individuals to provide. For five of these cases, we reviewed an earlier exemption decision, one of which was from fiscal year 2002–03.</li> </ul>
9 Examine how the background check process is funded and whether Social Services requires applicants, licensees, and individuals to pay all appropriate fees prior to granting license clearances.	<ul style="list-style-type: none"> <li>Obtained and reviewed the CBCB's expenditure information to determine how Social Services funds its background check process.</li> <li>Obtained and reviewed Social Services' licensing programs' expenditure information and information about their funding sources to determine how each program is funded.</li> <li>Evaluated Social Services' exemption letter templates and its policies to determine whether the individual was required to obtain court documents.</li> </ul>
10 Determine the status of applicable recommendations from previous State Auditor reports.	<ul style="list-style-type: none"> <li>Identified past State Auditor reports related to the background check processes and the sex offender registry. Identified and reviewed recommendations that were relevant to this audit.</li> <li>Evaluated Social Services' and Justice's implementation of the relevant recommendations by interviewing relevant staff and reviewing supporting documentation.</li> <li>The statuses of recommendations that are not fully implemented are presented in Table A beginning on page 76 in the Appendix.</li> </ul>
11 Since its effective date of January 2015, determine whether Social Services has implemented and is adhering to AB 2632 prohibiting granting an exemption for certain arrests prior to an investigation or clearance occurring.	<ul style="list-style-type: none"> <li>Interviewed relevant staff about AB 2632 and the arrest-only process.</li> <li>Reviewed department policies and procedures. Identified elements of the policies and procedures that changed as of the implementation of AB 2632 and evaluated whether the policies and procedures would fulfill the requirements of the law.</li> <li>Reviewed Social Services' Arrest-Only and Mixed RAP (RAP sheets with arrests with no convictions and separate convictions) spreadsheets to determine whether Social Services closed cases prior to the legal division's final review of the case. For the cases identified, reviewed the file information to evaluate whether the clearance was granted prematurely.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>12 Review and assess any other issues that are significant to the audit.</p>	<ul style="list-style-type: none"> <li>• Reviewed 20 exemption files from fiscal years 2002–03 through 2015–16 for appropriateness by evaluating the accuracy of the individual's self-disclosure form, the analyst's use of character references forms, and any other information in the file. For five of these files, we reviewed an earlier exemption decision, one of which was from fiscal year 2002–03.</li> <li>• Reviewed the 2010 report by the Senate Office of Oversight and Outcomes (Oversight office) on Social Services' background check process. Identified the Oversight office's main concerns about the background check process and evaluated Social Services' actions to address these concerns. We determined that, overall, Social Services adequately addressed the Oversight office's concerns.</li> <li>• Reviewed state law related to sharing administrative action information and Social Services' interagency agreements to share this information in fiscal year 2015–16. Evaluated whether the interagency agreements fulfilled the intent of the law.</li> <li>• Reviewed Social Services' procedures for obtaining and reviewing administrative actions other departments took against individuals identified in the CBCB's database and evaluated how well they align with the purpose of state law.</li> <li>• Determined Social Services' timeliness in receiving other departments' administrative action information and sending its own administrative action information to other departments. Evaluated Social Services' timeliness of removing an individual from a facility during fiscal year 2015–16 as a result of another department's administrative action information.</li> <li>• Reviewed 10 cases for individuals who received an administrative action from another department and were associated with a facility licensed by Social Services. Obtained Justice's entire criminal history records for the 10 individuals and compared them to court documents to determine whether Justice was aware of the criminal histories of the individuals.</li> <li>• Evaluated Justice's efforts to reach out to courts and law enforcement agencies to improve reporting of disposition and arrest information.</li> </ul>

Sources: State Auditor's analysis of Joint Legislative Audit Committee audit request 2016-126, and information and documentation identified in the table column titled *Method*.

## Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the information systems listed in Table 8. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, or recommendations. Table 8 describes the analyses we conducted using data from these information systems, our methods for testing, and the results of our assessments. Although these determinations may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

**Table 8**  
**Methods Used to Assess Data Reliability**

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Justice  Applicant Processor as of June 30, 2016	To calculate the number and timeliness of responses to criminal history inquiries.	We performed data-set verification procedures and found no errors. Further, we performed electronic testing of key data elements and did not identify any significant errors. We did not perform accuracy or completeness testing on these data because the source documentation is located at multiple locations throughout the State, making such testing cost-prohibitive.	Undetermined reliability for these audit purposes. Although this determination may affect the precision of the numbers we present, sufficient evidence exists in total to support our audit findings, conclusions, and recommendations.
Justice  Criminal Record Update Section's and Problem Resolution Section's Monthly Utilization Reports from November 1, 2015 through October 31, 2016	To calculate the number of staff who worked on making criminal history information records complete and the number of hours staff spent performing this work.	<ul style="list-style-type: none"> <li>We performed data-set verification procedures and electronic testing of key data elements and found no significant errors. We were unable to conduct accuracy or completeness testing on these data because these reports are from primarily paperless systems.</li> <li>Alternatively, we could have reviewed the adequacy of selected information system controls that include general and application controls, but we determined that this level of review was cost-prohibitive.</li> </ul>	Undetermined reliability for this audit purpose. Although this determination may affect the precision of the numbers we present, sufficient evidence exists in total to support our audit findings, conclusions, and recommendations.

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INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Social Services  Licensing Information System as of July 3, 2016  Caregiver Background Check system as of July 18, 2016  Arrest-Only and Mixed RAP spreadsheets as of July 21, 2016	<ul style="list-style-type: none"> <li>• To calculate the number of cases closed and average number of days between the receipt of a RAP sheet and its final outcome.</li> <li>• To calculate caseload statistics for Social Services' staff working on background check cases.</li> <li>• To calculate the timeliness of key steps, and the associated number of cases, in Social Services' review of arrest-only background check cases.</li> <li>• To select cases open at any point during fiscal years 2013–14 through 2015–16 for review.</li> </ul>	We performed data-set verification procedures and found no errors. Further, we performed electronic testing of key data elements and did not identify any significant errors. We reviewed existing information to determine what is already known about the data and found that prior audit results indicate pervasive weaknesses in the general controls over Social Services' information systems.	Not sufficiently reliable for these audit purposes. Although this determination may affect the precision of the numbers we present, sufficient evidence exists in total to support our audit findings, conclusions, and recommendations.
Social Services  Administrative Actions Exchange Log tracking spreadsheet from administrative action data for the period of July 2014 through June 2016	<ul style="list-style-type: none"> <li>• To identify the number of individuals with administrative actions from other departments who were also active or allowed to be present in Social Services' licensed facilities in fiscal year 2015–16.</li> <li>• To determine the number of those individuals with administrative actions from other departments whose cases were still pending as of September 2016.</li> <li>• To select pending cases for individuals with administrative actions from other departments to review.</li> <li>• To select cases to review for which Social Services appeared to have learned of conviction information it was previously unaware of through its administrative action sharing program.</li> </ul>	We performed data-set verification procedures and electronic testing of key fields and found no errors. We reviewed existing information to determine what is already known about the data and found that prior audit results indicate pervasive weaknesses in the general controls over Social Services' information systems.	Not sufficiently reliable for these audit purposes. Although this determination may affect the precision of the numbers we present, sufficient evidence exists in total to support our audit findings, conclusions, and recommendations.
Social Services  California Department of Public Health, Department of Health Care Services, Emergency Medical Services Authority, and Social Services administrative action reports for the period of July 2015 through June 2016	To determine the number of administrative actions the various departments shared with Social Services, as well as how many administrative actions Social Services shared with the various departments.	We performed data-set verification procedures and found no errors. Further, we performed electronic testing of key data elements and did not identify any significant errors. We reviewed existing information to determine what is already known about the data and found that prior audit results indicate pervasive weaknesses in the general controls over Social Services' information systems.	Not sufficiently reliable for this audit purpose. Although this determination may affect the precision of the numbers we present, sufficient evidence exists in total to support our audit findings, conclusions, and recommendations.
Social Services  Investigations Branch's Registered Sex Offender tracking spreadsheet as of July 1, 2016	To make a selection of registered sex offenders for review whose addresses matched those of licensed facilities from January 2016 through May 2016.	This purpose did not require a data reliability assessment. Instead, we gained assurance that the population was complete by comparing the total number of records in the spreadsheet to totals matches reported to the Investigations Branch by Social Services' Information Systems Division.	Complete for this audit purpose.

Source: State Auditor's analysis of various documents, interviews, and data from the entities listed in the table.

We conducted this audit 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



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State Auditor

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## APPENDIX

### Status of Prior State Auditor's Recommendations That Have Not Been Fully Implemented

As discussed in Table 7 on page 69, this audit requested that the State Auditor determine the status of applicable recommendations from previous state auditor reports. The State Auditor has issued five reports that made a total of 32 recommendations to departments that were related to this audit's scope of Social Services' processes for conducting background checks and ensuring that registered sex offenders are not present in licensed facilities.<sup>13</sup> Although almost a third of these recommendations have been implemented, many have been either only partially implemented or not implemented. Some of these prior recommendations address concerns that are very similar to those we noted in our current audit. Table A beginning on the following page presents the recommendations we determined are not fully implemented with an explanation for our assessment. Where applicable, we identify the pages in our report that discuss our assessment and related recommendations.

<sup>13</sup> Table A only includes recommendations from two of these audits because all relevant recommendations from the other three audit reports have been fully implemented. These other reports are 2007-115 (April 2008), *Sex Offender Placement: State Laws Are Not Always Clear, and No One Formally Assesses the Impact Sex Offender Placement Has on Local Communities*; 2011-101.1 (October 2011), *Child Welfare Services: California Can and Must Provide Better Protection and Support for Abused and Neglected Children*; and 2015-502 (July 2015), *Follow-Up—California Department of Social Services: Although Making Progress, It Could Do More to Ensure the Protection and Appropriate Placement of Foster Children*.

**Table A****Previous Recommendations That Are Not Fully Implemented as of February 2017**

**Audit 2000-102, issued in August 2000; 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**

RECOMMENDATION	STATUS
<b>Social Services</b>	
<p>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.</p>	<p><b>Partially Implemented</b> Social Services' policy requires management to approve exemptions for violent felonies and nonviolent felonies if a certain amount of time has not passed since the most recent period of probation, parole, or incarceration. However, the CBCB does not require management review for nonviolent felony convictions when 10 years or more has passed since the end of the most recent period of probation, parole, or incarceration.</p> <p>The assistant chief of the CBCB stated that he performs spot checks for quality on a small selection of background check cases, but there are no documented procedures for these reviews, and the chief of the CBCB stated that the assistant chief has not documented the cases he reviews in the tracking system that Social Services' quality assurance unit used.</p>
<p>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 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.</p>	<p><b>Partially Implemented</b> Exemption analysts are required to evaluate information other than a RAP sheet, but they do not always obtain or receive all of the additional documents. See the details of this assessment starting on page 28 and the related recommendation on page 39.</p>
<p>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.</p>	<p><b>Not Implemented</b> Although the CBCB has an informal expectation for sending out exemption-needed letters within five days of receiving the RAP sheet, management does not actively track whether its staff meet the expectation. In addition, we found instances where the CBCB failed to meet its goals. We make a recommendation for the CBCB to establish time frames for its exemption process and monitor against those time frames on page 60.</p>
<p>To process criminal history checks as quickly as possible, the department should 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.</p>	<p><b>Partially Implemented</b> Although the Investigations Branch has guidelines for following up on requests for police reports from local agencies, the CBCB does not have similar guidelines. Such guidelines could result in more timely receipt of documents.</p>
<p>To process criminal history checks as quickly as possible, the department should 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.</p>	<p><b>Partially Implemented</b> The CBCB uses a report to track cases that an exemption analyst has taken action on within a specified time frame. Managers are expected to review these reports for the analysts they oversee, but the assistant chief of the CBCB indicated that these reviews are not documented. Additionally, the department does not have time frames for which it expects staff to process exemptions. See our assessment regarding the lack of time frames and exemption processing delays starting on page 47, and the related recommendation on page 60.</p>
<p>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.</p>	<p><b>Not Implemented</b> In our 2000-102 report, we identified that Social Services interpreted the law to mean that the department is authorized to allow people who disclose criminal convictions to begin caring for children before going through the mandatory FBI check. Social Services' approach to self-disclosed convictions is still not aligned with the law. See the details of this assessment beginning on page 34 and the related recommendations beginning on page 38.</p>

RECOMMENDATION	STATUS
<p>To implement the FBI record-checking requirement in accordance with the law, the department should properly apply the requirements that allow individuals to work with or be in close proximity to children while their FBI check is pending.</p>	<p><b>Partially Implemented</b>                      State law requires that Social Services obtain California and federal criminal history information before issuing a license or certificate of approval to any individual to operate a foster family home or certified family facility. However, the CBCB does not wait for FBI records before clearing individuals to be present in other types of child care facilities unless the individual discloses a conviction from another state on his or her criminal history self-disclosure. For more on our assessment of how Social Services inadequately handles self-disclosure forms, see our assessment starting on page 34 and the related recommendations beginning on page 38.</p>
<p>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 and exclusion order.</p>	<p><b>Partially Implemented</b>                      Although Social Services has established policies and procedures for district offices to enforce license revocations and facility exclusion decisions within 30 days, the department has not provided clear guidance for when district offices must conduct site visits to verify an individual is complying with the revocation and exclusion order. In addition, we found that regional offices are not always verifying that individuals have been excluded from licensed facilities. See the details of this assessment beginning on page 54 and the related recommendation on page 61.</p>
<p>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.</p>	<p><b>Partially Implemented</b>                      The department maintains a goal of filing an action within 120 days of receiving the case, and attorneys are asked to document any reason that this goal is exceeded. Our testing showed several cases exceeding the 120-day goal, with the cause of the delay generally attributed to delays in assigning cases and waiting for receipt of evidence. See the details of this assessment beginning on page 56 and the related recommendation on page 60.</p>
<p><b>Justice</b></p>	
<p>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.</p>	<p><b>Partially Implemented</b>                      Although Justice has an automated system to transmit subsequent RAP sheets, as of early February 2017, it did not send all convictions to Social Services because of its interpretation of the law. However, Justice recently acknowledged the law was unclear and that it likely has the authority to transmit additional convictions it had not previously transmitted. See the details of this assessment beginning on page 13 and the related recommendation on page 24.</p>
<p>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.</p>	<p><b>Partially Implemented</b>                      According to managers at Justice, most information about arrests and dispositions is reported electronically. Justice knows that it is not receiving all disposition and arrest information, and it is aware that many dispositions are received much later than the required 30 days. However, Justice does not monitor the submission of arrest information and therefore has no way to know if it is sent on time. Additional details of this assessment begin on page 41, and the related recommendations begin on page 59.</p>
<p><b>Audit 2002-114, issued in August 2003; Department of Social Services: Continuing Weaknesses in the Department's Community Care Licensing Programs May Put the Health and Safety of Vulnerable Clients at Risk</b></p>	
<p><b>Social Services</b></p>	
<p>To ensure that criminal history exemptions are not granted to individuals who may pose a threat to the health and safety of clients in community care facilities, the department should make certain it has clear policies and procedures for granting criminal history exemptions.</p>	<p><b>Not Implemented</b>                      The CBCB has not recently updated its main procedures manual, but it has developed additional procedures. However, these new procedures were communicated using memos. As a result of the procedures manual containing incomplete guidance, staff may have a difficult time determining what procedures to follow. See the details of this assessment and the related recommendations in Table 6 on page 63.</p>

RECOMMENDATION	STATUS
<p>To ensure that criminal history exemptions are not granted to individuals who may pose a threat to the health and safety of clients in community care facilities, the department should ensure staff are trained on the types of information they should obtain and review when considering a criminal history exemption, such as clarifying self-disclosed crimes and vague character references.</p>	<p><b>Partially Implemented</b>            The CBCB's trainings for its exemption analysts are not held frequently enough and lack detail. Additional details of this assessment and related recommendation are in Table 6 on page 64.</p>
<p>To process criminal history reviews as quickly as possible so that delays do not impede individuals' right to work or its licensed facilities' ability to operate efficiently, the department should work to make certain that staff meet established time frames for notifying individuals that they must request a criminal history exemption and for making exemption decisions as requested.</p>	<p><b>Not Implemented</b>            The CBCB at one time had established time frames for notifying individuals exemptions were required and for making exemption decisions. However, as previously discussed in this table, Social Services has not implemented goals for notifying individuals that they must request an exemption. Further, it does not have formal time goals for making an exemption decision. Additional details of this assessment and related recommendations begin on page 46 and page 60, respectively.</p>
<p>The department should assess its quality control review process and ensure that these policies and procedures encompass a review of the key elements of the exemption decision process and staffs' completion of appropriate and necessary correspondence.</p>	<p><b>Partially Implemented</b>            According to the chief of the CBCB, the CBCB previously had a quality control unit that disbanded in 2015. However, the assistant chief of the CBCB stated that he reviews a selection of background check cases, and the chief of the CBCB stated that in January 2017 an analyst was being trained to complete quality assurance reviews using the procedures the previous unit used.</p>
<p>The department should ensure that policies and procedures are consistent and clear on where the responsibility lies for ensuring that the necessary action occurs upon an [arrest-only] investigation's completion.</p>	<p><b>Not Implemented</b>            Arrest-only procedures for how to process cases after an investigation's completion provide varied guidance on where cases are routed after the final legal recommendation.</p>
<p>The department should review and enforce its arrest-only policies and procedures to ensure that it is issuing criminal history clearances only when appropriate to do so. In addition, the department should properly train staff on these policies and procedures.</p>	<p><b>Partially Implemented</b>            The arrest-only unit conducted its first formal training in late September 2016, which is more than a year since the arrest-only unit was formed. In addition, the CBCB has not yet completed all of the arrest-only training it intends to conduct. See the details of this assessment and the related recommendations in Table 6 on page 64.</p>
<p>To ensure the department can account for all subsequent RAP sheets it receives and that it processes this information promptly, the department should develop and implement a policy for recording a subsequent RAP sheet's receipt and train staff on this policy. In addition, upon receiving a subsequent RAP sheet with a conviction, the department should ensure that staff meet established time frames for notifying individuals that they need an exemption.</p>	<p><b>Partially Implemented</b>            Although the CBCB has policies on receiving and recording subsequent RAP sheets, it does not have formal time frames for notifying individuals that they need exemptions. Additional details of this assessment and related recommendations begin on page 46 and page 60, respectively.</p>
<p>The department should conduct follow-up visits to ensure that enforcement actions against facilities are carried out. The department should also document its follow-up for enforcement of revocation and exclusion cases.</p>	<p><b>Partially Implemented</b>            Although Social Services has policies that require its staff to ensure that enforcement actions are carried out within 30 days of the action, our testing found that regional offices did not always verify the exclusion of individuals related to arrest-only cases. Additional details of this assessment and related recommendation begin on page 54 and page 61, respectively.</p>
<p><b>Justice</b></p>	
<p>Justice should continue to implement and further develop automated systems that not only increase criminal history reporting, but also ensure that reporting agencies submit arrest and disposition information more quickly and with fewer errors.</p>	<p><b>Partially Implemented</b>            Justice receives most data electronically. However, it is not receiving all information in a timely manner. See the details of this assessment beginning on page 43 and the related recommendations beginning on page 59.</p>

Sources: California State Auditor's analysis of Justice's and Social Services' records and interviews with key staff members about the recommendations identified in the table.

March 2017



CDSS

WILL LIGHTBOURNE  
DIRECTORSTATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)EDMUND G. BROWN JR.  
GOVERNOR

February 23, 2017

Ms. Elaine M. Howle, State Auditor\*  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Dear Ms. Howle:

SUBJECT: CALIFORNIA STATE AUDITOR'S OFFICE REPORT 2016-126:  
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES: ITS CAREGIVER  
BACKGROUND CHECK BUREAU LACKS CRIMINAL HISTORY  
INFORMATION IT NEEDS TO PROTECT VULNERABLE POPULATIONS  
IN LICENSED CARE FACILITIES

This letter provides the California Department of Social Services' (CDSS) initial response to the California State Auditor's Office draft of the above entitled report.

If you have any questions concerning the enclosed CDSS response, please contact me at (916) 657-2598 or Cynthia Fair, Audits Bureau Chief, at (916) 651-9923.

Sincerely,

WILL LIGHTBOURNE  
Director

Enclosure

\* California State Auditor's comments begin on page 89.

California Department of Social Services (CDSS)  
**RESPONSES TO AUDIT RECOMMENDATIONS**

California State Auditor (CSA)

Audit #: 2016-126

Audit Title: ***California Department of Social Services: Its Caregiver Background Check Bureau Lacks Criminal History Information It Needs to Protect Vulnerable Populations in Licensed Care Facilities***

Recommendations for Social Services:

**Recommendation 1:**

*To ensure that it more effectively shares, receives, and uses administrative action information, Social Services should do the following:*

- *Develop and maintain a centralized database containing its own administrative actions and those received from other state departments, in order to share its information among these departments as required by state law. Social Services should seek funding if it believes additional resources are necessary.*
- *Until a centralized database can facilitate real-time information transmittal, amend its interagency agreements to specify that the departments should share their administrative action information as soon as possible after the action is final, but no later than five business days of the end of the month in which it became final. It should begin amending its interagency agreements by July 2017.*
- *Amend its interagency agreements so that the agreements remain in effect indefinitely. It should begin amending its interagency agreements by July 2017.*
- *Share administrative action information as it receives information from other departments with the county agencies that perform licensing duties on its behalf.*
- *Direct its exemption analysts to review the administrative action information as part of their background check reviews.*

**CDSS Initial Response:**

CDSS agrees that the timely sharing and consideration of administrative actions is vitally important to ensuring that individuals are prevented from moving between facility types as necessary to protect the health and safety of persons in care. The Department is updating all its data sharing agreements with other agencies to be indefinite, and to include timeframes for data exchange of not less than once per month. These agreements will be complete by July 2017.

To ensure timely sharing of information, the Department will disseminate, not less than once per month, to other agencies all administrative actions, including the department's and those reported by other agencies, including counties. The Department has also



already directed its exemption analysts to document that they have reviewed and considered any administrative actions as part of their background check reviews.

**Recommendation 2:**

*To ensure that Social Services evaluates the risk individuals may pose to vulnerable populations in its licensed care facilities as quickly as possible, by July 2017 Social Services should establish time frames for staff to evaluate individuals who are present in their facilities and who have received administrative actions from other departments. In addition, it should monitor and follow up with the appropriate staff regarding the status of their assessments of these individuals and their final decisions.*

**CDSS Initial Response:**

CDSS agrees with this recommendation. By April 2017, the Department will have revised the procedures for processing other department administrative actions by analysts as recommended. These revisions include specific timeframes for the various steps of the process. By June 2017, any needed changes to the Evaluator Manual will be identified, staff will have been trained, and the process implemented.

**Recommendation 3:**

*To comply with state law and better protect vulnerable populations in California's licensed care facilities, Social Service should immediately change its policy to require that its exemption analysts evaluate all infraction convictions, other than minor traffic violations, before granting exemptions to individuals. If Social Services believes it is not feasible to evaluate these convictions, it should report to the Legislature by June 2017 how it ensures that vulnerable populations are not at risk and should request that the Legislature change the law to eliminate infraction convictions as a crime category that Social Services must evaluate in order to grant an exemption.*

**CDSS Initial Response:**

CDSS has an extensive process for reviewing the criminal background of individuals seeking to work in community care facilities including information regarding arrests, misdemeanors and felonies. The Department's current process focuses on evaluating risks posed by criminal offenders, and the Department believes that it is neither feasible nor effective at this time to include review of thousands of infractions. Penal Code section 19.8 provides legislative intent that most criminal infractions shall not be used to deny licensure.

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**Recommendation 4:**

*To comply with state regulations and its policies, the Caregiver Background Check Bureau (CBCB) should immediately take the following actions:*

- *Ensure that its background check case files support its exemption decisions by including complete decision summaries and all required support documents.*

- *Update its exemption-needed letter to identify all of the documents its policies require exemption analysts to evaluate when deciding whether to grant an exemption. The letter should also eliminate requests for documents that Social Services does not believe can be used if the applicant obtains them, such as law enforcement reports.*

#### **CDSS Initial Response:**

CDSS agrees with this recommendation. All necessary documentation will be required prior to Analyst action. To monitor the implementation of this policy, beginning in March 2017, managers in the Caregiver Background Check Bureau will regularly review samples of cases from their staff to ensure that the case files contain complete information that supports exemption decisions at the time the exemption is approved, including decision summaries and all supporting documents. At the Bureau level, expectations and accountability for complete decision summaries and supporting documents will be reinforced through Bureau and unit meetings and regularly scheduled mandatory exemption analyst trainings. Work has also already begun to update the criminal record exemption letters to applicants to identify the specific documentation necessary to complete the exemption analysis.

#### **Recommendation 5:**

*To ensure that its exemption analysts are receiving information that Social Services believes is necessary and relevant to make exemption decisions, Social Services should immediately revise its policy to require that exemption analysts obtain law enforcement reports on behalf of individuals who seek exemptions.*

#### **CDSS Initial Response:**

- ③ CDSS agrees with this recommendation and in February 2017, issued an All Staff Memo to the exemption analysts instructing them to request arrest reports from a law enforcement agency when an exemption request is received.

#### **Recommendation 6:**

*Until the Legislature requires that Social Services receive both California and federal criminal history information before issuing a clearance or processing an exemption, Social Services should immediately do the following to better protect vulnerable populations:*

- *Revise its policy to require its regional offices to obtain all self-disclosure forms for individuals who submit fingerprints to Justice as part of an application to be present in a licensed facility. The regional offices should then forward to CBCB all self-disclosure forms that identify a conviction.*
- *Change its practice of allowing individuals who have not submitted a self-disclosure form to Social Services to have access to licensed facilities, thus reflecting the requirements of state law. In addition, the CBCB should develop a process to ensure that individuals cannot receive a clearance or an exemption*



*without first receiving both California and federal criminal history information if a regional office does have their self-disclosure form for the individual.*

#### **CDSS Initial Response:**

CDSS agrees that all applicants should submit a self-disclosure form. The Department is implementing a change to the procedures for conducting criminal exemptions to require that self-disclosure forms are submitted to the Department (in addition to the licensee, if applicable). Currently these forms are only submitted to facility licensees, who then forward to the Department any self-disclosed criminal record history. In addition, by April 2017, the Department will have also notified providers of the new requirement to provide the Department with all self-disclosure forms. By requiring that applicants send the forms directly to the Department, CDSS will receive and can act on this information in a more timely and consistent manner.

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By March 2017, the Regional Offices will provide the self-disclosure forms to the exemption analysts for review prior to any exemption being granted.

#### **Recommendation 7:**

*To ensure that Social Services processes criminal history reviews, investigations, and legal actions as quickly as possible so that delays do not impede individuals whose presence in a licensed facility would pose no risk, by July 2017 the department should establish formal time frames and monitor the stages of the following processes against those time frames:*

- *Exemption process: At a minimum, Social Services should establish time frames for notifying individuals and facilities that a criminal history exemption is required, evaluating information it receives, and for making decisions on exemptions. As part of monitoring, Social Services should identify when cases become backlogged and work to swiftly conclude those exemption reviews. In addition, if it determines that its staffing levels are insufficient to meet its time frames, it should seek additional resources.*
- *Legal process: At a minimum, Social Services should establish time frames for assigning cases to attorneys. Further, it should regularly monitor itself against the 120-day time frame for serving an accusation after the Legal Division receives a case.*
- *To ensure it can accurately monitor its pending cases, by May 2017 Social Services should develop a work plan to identify and address its exemption process backlog by September 2017.*

#### **CDSS Initial Response:**

CDSS agrees with this recommendation, and has committed to making continued improvements to the process for conducting criminal record exemptions. By May 2017, the Department will develop a formal work plan that will identify specific timeframes for

processing criminal history reviews, investigations and legal actions. The plan will include tracking and monitoring activities and progress notes. All managers will use the established timeframes to assess analyst workloads and training needs. Additionally, this process will include the provision of quarterly reports to the Deputy Director. These processing timeframes will be added to all training materials and will be communicated to all staff via an All Staff Memo.

The Department has already implemented changes to its case intake and legal triage process; tripling the staff assigned. The department had previously identified the need for updated procedures and monitoring and several new procedures had been developed which will be fully implemented as of March 2017.

The Department also agrees with the recommendation to establish internal management time frames for assigned attorneys to cases and that cases should be filed within 120 days. The updated procedures will clearly set forth expectations and require that if the timeframe is exceeded, the reason for the variance must be documented and Supervisor approval must be noted.

**Recommendation 8:**

*To ensure that it can accurately monitor its pending cases, by May 2017 Social Services should develop a work plan to identify and address its exemption process backlog by September 2017. At a minimum, the work plan should include reviewing the cases its database identifies as open without activity after 150 days of receiving a RAP sheet and closing the cases in its database where Social Services already performed its final exemption decision action.*

**CDSS Initial Response:**

5 CDSS agrees that implementing a formal process to monitor pending cases is necessary. Establishment of processing timeframes and regular monitoring as described earlier will effectively identify pending cases and prioritization of analyst workloads. System data quality issues identified during the audit will also be addressed, which will provide the program a more accurate picture of existing or impending backlogs. As recommended, a work plan will be initiated by September 2017, to address the current backlog. Data system change requests will be identified and initiated prior to May 2017.

**Recommendation 9:**

*To ensure that Social Services processes arrest-only cases as quickly as possible, it should immediately follow its arrest-only and investigation policies, and monitor against those time frames for the various stages of the processes.*

**CDSS Initial Response:**

CDSS agrees with this recommendation and initiated the current arrest only process to ensure that a person's ability to work or be licensed is not delayed. The Department's arrest-only processing procedures must, above all, ensure the safety of vulnerable care facility residents and children. As a result, the Department is currently requiring managers in the Caregiver Background Check Bureau to actively monitor these cases.

It is important to note that some delays are beyond the Department's control. A thorough evaluation of prior arrest conduct involves obtaining arrest reports, locating and interviewing witnesses, and evaluated any mitigating/rehabilitative evidence. The Department must request record information (arrest reports) from over 500 law enforcement jurisdictions in California alone. Each has its own policies and procedures for providing this information, including whether fees must be paid by the state in advance, record retention and destruction polices, and timelines for responding to records requests. As a result of past delays, the Department has been required to utilize the subpoena process to obtain records from many jurisdictions.

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**Recommendation 10:**

*To ensure that its regional offices consistently verify that excluded individuals are no longer present at licensed facilities, at a minimum, Social Services should immediately revise its policy to require that regional offices conduct site visits after it issues the exclusion order. In addition, it should formalize the verification process it develops in its procedures, train all regional offices, and monitor compliance with the process.*

**CDSS Initial Response:**

CDSS agrees with this recommendation to establish a process to ensure that excluded individuals are no longer present at licensed facilities. Effective April 1, 2017 in person visits will be made to all facilities following an exclusion order. During the month of March, staff training and monitoring procedures will be established to ensure compliance.

**Recommendation 11:**

*To ensure that regional offices pursue legal actions in a timely manner, by July 2017 Social Services' headquarters should identify a resource – such as a unit – to monitor and follow up with the regional offices regarding the status of their legal actions related to substantiated address matches of registered sex offenders at licensed facilities.*

**CDSS Initial Response:**

CDSS agrees with this recommendation and by July 2017, each Program Administrator will monitor, track and report to the Deputy Director the status of the legal cases in their program.

**Other Areas Reviewed Additional Recommendations:**

**Additional Recommendation 1:**

*The CBCB should update its procedures manual so that it is a centralized document that staff can use for the most up-to-date guidance in performing their duties. In addition, it should update the CBCB-specific policies and combine them into a centralized document.*

**CDSS initial response:**

This recommendation has already been partially implemented, and will be fully implemented by July 2017. The Bureau is reorganizing the SharePoint site where the procedures are located to assist staff with easily locating information. The Evaluator Manual is being revised and where appropriate internal policies are being combined.

**Additional Recommendation 2:**

*To ensure that its procedures are consistent and clear, the Investigations Branch should update its arrest-only case procedures and develop procedures for subsequent arrest-only cases.*

**CDSS initial response:**

- ⑦ In October 2016, the Investigations Branch fully implemented the procedure changes to include information related to subsequent arrest-only cases.

**Additional Recommendation 3:**

*The CBCB should follow its new schedule for its refresher training sessions on the exemption process and continue to offer sessions as managers and staff identify a need.*

*The CBCB's arrest-only unit should develop and periodically conduct trainings on the aspects of the arrest-only process for which analyst have not yet received training.*

**CDSS initial response:**

- ③ These recommendations have been implemented in February 2017. The Caregiver Background Check Bureau has developed refresher training which is provided bi-monthly. The arrest procedures have been developed and incorporated into the refresher training. There will also be a separate training specific for the arrest unit to be held in April 2017.

**Additional Recommendation 4:**

*The CBCB should implement its planned changes for ensuring that files in the file room are in the appropriate place and filed correctly.*

**CDSS initial response:**

This recommendation has been fully implemented in January 2017. Additional shelving was installed in the file room which houses all case files that are appropriately filed. With the filling of vacant Office Technician positions, the Caregiver Background Check Bureau is redirecting one existing Office Technician to be the designated File Clerk to ensure the case files are appropriately tracked in and out of the file room.

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## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM SOCIAL SERVICES

To provide clarity and perspective, we are commenting on the response to our audit from Social Services. The numbers below correspond to the numbers we placed in the margin of Social Services' response.

Social Services states that it is updating its interagency agreements to specify a time frame for data exchange of not less than once per month. However, this does not sufficiently address the concern we raise in the report. As we describe beginning on page 15, and as shown in Figure 4 on page 20, in fiscal year 2015–16, Social Services and the four other departments did not always promptly submit administrative actions to each other. During our review, we observed several instances in which departments did not transmit information about administrative actions to Social Services until more than one month after the actions became final. As a result, our recommendation on page 25 is for the interagency agreements to specify that the departments should share their administrative action information as soon as possible after the action is final, but no later than five business days after the end of the month in which it became final. Amending its agreements in this way would ensure all agencies transmit information soon after the administrative action becomes final, thus minimizing the risk to vulnerable populations in its licensed care facilities. We look forward to learning of Social Services' revision to the interagency agreements to address our concern in its 60-day, six-month, and one-year responses to this recommendation.

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We shared our concerns about how Social Services handles infraction convictions multiple times with Social Services throughout the audit. As we describe on page 28, we observed that some infractions Social Services receives are related to theft, selling liquor to a minor, and leaving a child under six years of age in a vehicle without supervision. We stand by our recommendation and believe that Social Services' reference to Penal Code section 19.8 is misleading. If, as Social Services believes, there were legislative intent that most criminal infractions shall not be used to deny licensure, the clearest way to express that intent would have been to use the term *infraction* in Health and Safety Code section 1522(a)(1), which identifies the crimes that Social Services must evaluate. However, we note that the Legislature has consistently limited the exception to "a crime other than a minor traffic violation" since it first enacted the statute in 1973. Finally, as we recommend on page 39, if Social

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Services believes it is not feasible to evaluate all of these convictions, it should report to the Legislature by June 2017 how it ensures that vulnerable populations are not at risk and should request a change to state law.

- ③ Social Services refers to an action it has only recently taken. We look forward to learning more about Social Services' implementation of this recommendation and receiving supporting documentation in its 60-day response to this report.
- ④ Social Services asserts that self-disclosure forms are submitted to facility licensees who then forwards to Social Services any self-disclosed criminal record history. We acknowledge on page 34 that this is what Social Services' policy suggests should occur. However, as we discuss on page 35, this process is not functioning as intended. Specifically, staff at Social Services informed us that some regional offices do not collect self-disclosure forms for individuals applying for employment. In order for the department to comply with state law, Social Services must obtain a self-disclosure form from any individual it allows to be present in a licensed facility in advance of receiving that individual's federal criminal history.
- ⑤ Social Services' response suggests that our report presents inaccurate information about its backlogged cases. On page 49, we state our conclusion that as of June 30, 2016, the CBCB's database showed that more than 2,500 open cases were backlogged. We stand by the accuracy of this conclusion. As we note on page 50, when we reviewed 10 backlogged cases, we found the status of some cases to be troubling. For example, we found two individuals among these 10 backlogged cases that were present in licensed facilities without adequate background checks for seven and 13 years, respectively.
- ⑥ Although Social Services is correct that some delays in the arrest-only investigation process are beyond its control, the delays we discuss in our report, beginning on page 50, are within Social Services control, such as delays in conducting preliminary reviews of RAP sheets. We look forward to reviewing documentation as to how Social Services is following its arrest-only policies and monitoring against associated time frames in its 60-day, six-month, and one-year responses.
- ⑦ We agree that Social Services' Investigations Branch updated its procedures to address how it handles subsequent arrest-only cases. Our concern was that Social Services did not document its process for subsequent arrest-only cases, as it did for initial arrest-only cases. Therefore, we have made adjustments to the text of our report and the corresponding recommendation on page 63.



March 2017

**XAVIER BECERRA**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



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February 23, 2017

Elaine M. Howle, CPA\*  
California State Auditor  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814

Re: CSA Audit Report 2016-126

Dear Ms. Howle,

The Department of Justice (DOJ) has reviewed the California State Auditor's (CSA) draft CSA Audit Report 2016-126 and appreciates the opportunity to respond to the report.

CSA has made recommendations to both Justice (DOJ) and the Legislature with regard to criminal record background checks. By July 2017, DOJ will be charged with ensuring it sends Social Services criminal history information within the 14-day timeframe required by state law. ①

In response to the CSA's specific recommendations to DOJ identified in the draft report, DOJ submits the following responses:

**CSA Recommendation:** *To ensure that Social Services receives all necessary information for making exemption decisions, the Legislature should amend state law to require Justice to send Social Services all available sentencing information for all convictions. Additionally, the Legislature should amend state law to require Justice to send juvenile criminal history information related to serious and violent felony offenses as well as any other juvenile criminal history that Social Services identifies as valuable to exemption reviews.*

**DOJ Response:**

DOJ agrees with this recommendation. Express authority from the Legislature is needed before DOJ can implement the recommendations made by the CSA.

**CSA Recommendation:** *To ensure that any entity authorized by state or federal law to receive state or federal criminal history information subsequent to receiving the initial RAP sheet is informed of all criminal activity of an individual, the Legislature should do the following:*

\* California State Auditor's comments appear on page 95.

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- *Amend state law to clearly direct Justice to transmit all convictions it receives to the entities authorized to receive subsequent criminal history.*
- *Require Justice to obtain and transmit subsequent federal RAP sheets to all entities authorized to receive subsequent California criminal history information and to report to the Legislature periodically about its implementation efforts.*

**DOJ Response:**

DOJ agrees with the recommendation and is committed to convening a group of the largest applicant agency stakeholders to examine the fiscal aspects of State participation in the federal RAP back program. However, additional resources and funding will be needed to enable DOJ to adequately assess and determine the full impact of statewide participation in the program.

**CSA Recommendation:** *To ensure that Social Services receives all appropriate criminal history information, Justice should immediately update its procedures to accurately reflect that staff should disseminate non-referable arrests when there is a corresponding conviction and ensure that staff follow these updated procedures.*

**DOJ Response:**

- ② DOJ agrees with the recommendation and completed the update to its procedures to reflect the recommendation of the CSA—provided to the CSA via email on February 15, 2017.

**CSA Recommendation:** *To ensure that Social Services receives criminal history information within 14 days of receiving an individual's fingerprint information, as state law requires, by July 2017 Justice should analyze its process, including delayed transmissions, implement changes to address problems it identifies and regularly measure itself against the requirement to determine whether it is meeting its statutory requirement.*

**DOJ Response:**

DOJ agrees with this recommendation and has begun analyzing its program processes, including delayed fingerprint image transmissions, to respond to a Social Services background check request within 14 days of receiving an individual's fingerprint information, as state law requires.

**CSA Recommendation:** *To ensure that it has complete disposition information, Justice should coordinate with the Judicial Council at least once a year to share information about court reporting gaps and to determine the need to distribute additional information to courts about reporting requirements and the manner in which to report. In addition, Justice should convene its advisory committee and meet on a regular basis to discuss, at a minimum, improving the frequency and timeliness with which courts report dispositions to Justice and law enforcement agencies report arrest information to Justice.*

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**DOJ Response:**

DOJ agrees with the recommendation and has started planning for an Attorney General's Advisory Committee meeting in the Spring/Summer of 2017.

Over the course of several years, DOJ has explored various means to identify, retrieve, and match incoming criminal record information as a way to improve the completeness of the State's criminal history repository. In addition to refining arrest to disposition matching criteria, DOJ has worked hand-in-hand with courts, local enforcement agencies, and district attorney offices to obtain complete criminal record information. Process improvement efforts have included both manual (business) and electronic processes.

**CSA Recommendation:** *To ensure that it is receiving all arrest information from law enforcement agencies, at a minimum, Justice should consider trends in the number of arrest reports each law enforcement agency sends it and the number of reports that it might expect to receive from an agency given the agency's size, location, and reporting history. Whenever Justice identifies a law enforcement agency that is determines may not be reporting all required information, it should request that the agency forward all required arrest information.*

**DOJ Response:**

DOJ is not currently charged with enforcing arrest and disposition-reporting requirements imposed on the courts and local enforcement agencies, nor does it have a program or resources in place or any practical means of ensuring that the courts and local enforcement agencies report arrests and dispositions in a timely manner.

CSA Audit Report 2016-126 states, "Justice knows that it is not receiving complete information from California's courts for all individuals who commit crimes in the State, but it has not taken adequate steps to address the problem." The Penal Code obligates courts and local enforcement agencies to report arrests and dispositions to DOJ. DOJ is required to collect, compile, and disseminate that information, but has no obligation to ensure that courts and local enforcement agencies comply with their reporting obligations in the first instance. Nor does DOJ have any practical means of ensuring that courts and local enforcement agencies report arrests and (complete) dispositions on a timely basis. DOJ is nevertheless open to any statewide reforms that would improve compliance system-wide, and already works with the Judicial Council and the law enforcement community to improve the flow of information.

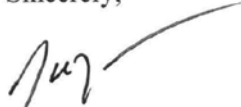
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February 23, 2017

Page 4

Again, thank you for the opportunity to review and comment on the draft audit report. If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe", with a long, sweeping horizontal stroke extending to the right.

Joe Dominic, Director

California Justice Information Services Division

cc: Sean McCluskie, Chief Deputy Attorney General  
Paul Stein, Deputy Attorney General  
Tammy Lopes, Director, Division of Administrative Support  
Victoria Sawyer, Special Assistant to the Chief Deputy



## COMMENTS

### CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM JUSTICE

To provide clarity and perspective, we are commenting on the response to our audit from Justice. The numbers below correspond to the numbers we placed in the margin of Justice's response.

It is unclear what Justice means by this statement. Justice states that by July 2017 it will be charged with ensuring it sends Social Services criminal history information within the 14-day time frame. However, as it acknowledges in its response on page 92, this time frame is already required by state law.

Justice's new procedures address the concern we raised, beginning on page 12, that Justice was removing nonreferable arrests from RAP sheets it sent Social Services when there was an associated conviction. We look forward to reviewing documents supporting its efforts to ensure that staff follow these updated procedures in its 60-day, six-month, and one-year responses.

Justice's response repeats perspective that we already included in our report. We acknowledge on page 43 that Justice does not have a statutory requirement to monitor courts' compliance with their reporting requirement. We also state on page 45 that law enforcement agencies are required to report arrest information to Justice. Finally, on page 46 we include a deputy attorney general's perspective that Justice is not obligated to ensure courts and local law enforcement agencies comply with their reporting obligations. However, as we state on that same page, as the recipient of the information reported by courts and local law enforcement agencies, Justice is the only entity that is aware of the extent to which courts and local law enforcement agencies are reporting and the timeliness of the reporting. Therefore, Justice needs to participate in any effort to identify noncompliance with state law and remind those courts and law enforcement agencies that may not be reporting, or that may not be promptly reporting, about their obligations.

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