
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 902 **Hearing Date:** April 24, 2018
Author: Bates
Version: April 19, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Alcoholism or Drug Abuse Recovery or Treatment Facilities*

HISTORY

Source: Author

Prior Legislation: None

Support: Advocates for Responsible Treatment

Opposition: American Civil Liberties Union; California Association of Alcohol and Drug Program Executives, INC.; California Consortium of Addiction Programs and Professionals; County Behavioral Health Directors Association

PURPOSE

The purpose of this bill is to require a background check before issuing a license for an alcohol or drug abuse recovery or treatment facility and prohibit people convicted of specified offenses from obtaining a license unless a waiver is granted.

Existing law requires the Department of Justice (DOJ) to maintain state summary criminal history information and requires the Attorney General to furnish state summary criminal history information to authorized entities or individuals for employment, licensing, volunteering etc. (Penal Code § 11105)

Existing law requires the Department of Health Care Services (DHCS) to license RTFs that provide 24-hour residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery, treatment, or detoxification services. (HSC §11834.01 et seq.)

Existing law requires RTF licensees to provide at least one of the following nonmedical services: recovery, treatment, or detoxification services. Requires DHCS to adopt regulations requiring records and procedures appropriate for the type of service provided. Permits the records and procedures to include all of the following: admission criteria; intake process; assessments; recovery, treatment, or detoxification planning; referral; documentation of provision of recovery, treatment, or detoxification services; discharge and continuing care planning; or indicators of recovery, treatment, or detoxification outcomes. (HSC §11834.26)

Existing law grants DHCS sole authority in state government to determine the qualifications, including the appropriate skills, education, training, and experience of personnel working within licensed or certified alcoholism or drug abuse recovery and treatment programs. (HSC §11833)

Existing law requires, through regulations, all employees of an RTF with an adolescent waiver, who have supervisory responsibility for adolescent residents or frequent or routine contact with adolescent residents, to be subject to a CBC prior to their involvement in the provision of services to adolescents. Prohibits this requirement from applying to a resident of the RTF. (9 CCR §10624)

Existing law requires every person who possesses any controlled substance in Schedule I, II, or III, that includes opiates, opium derivatives, depressants, cocaine base, mescaline, peyote, tetrahydrocannabinol, hallucinogenic substances, or any controlled substance in Schedule III, IV, or V that is a narcotic drug, unless by a written prescription of a licensed physician, dentist, podiatrist, or veterinarian to be punished by imprisonment in a county jail for not more than one year, or punished by a term of imprisonment in a county jail or state prison for 16 months, or for two or three years for one or more prior convictions, as specified. (HSC §11350)

Existing law requires every person who possesses for sale or purchases for purpose of sale any controlled substance or narcotic drug specified in 5) above to be punished by imprisonment in county jail or state prison for two, three, or four years, as specified. (HSC §11351)

Existing law requires every person who transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance or narcotic drug specified in 5) above, unless prescribed by those licensed as specified in 5) above, to be punished by imprisonment in county jail or state prison for three, four, or five years, as specified. (HSC §11352)

Existing law requires every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance or narcotic drug specified in 5) above, to any person, or who offers, arranges, or negotiates to have any such controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and who then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any such controlled substance to be punished by imprisonment in county jail for not more than one year, or to be punished by imprisonment in county jail or state prison for two, three, or four years, as specified. (HSC §11355)

Existing law requires any person receiving health care for which he or she was not eligible based on false declarations, or any person making false declarations as to eligibility, as specified, to be liable for repayment and to be guilty of a misdemeanor or felony, as specified. Requires any person who willfully and knowingly counsels or encourages any person to make false statements or otherwise causes false statements to be made on an application in order to receive health care services, as specified, to be liable for damages incurred, as specified. (WIC §14014)

Existing requires any person, as specified, who intends to defraud for payment, knowingly submits false information as specified, or knowingly and willfully executes or attempts to execute a scheme against the Medi-Cal program or any other state health care program, as specified, to be punishable by imprisonment in a county jail or state prison for two, three, or four years; a fine; or, both a fine and imprisonment. (WIC §14107)

Existing law requires any person who solicits or received any remuneration, as specified, in return for the referral or promised referral of any individual to a person for the furnishing or arranging for the furnishing of any service or merchandise, as specified; in return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, facility, service, or merchandise, as specified, to be punished by imprisonment in county jail for not longer than a year, a fine, or both a fine and imprisonment. Requires a second or subsequent conviction to be punishable by imprisonment in county jail or state prison for two, three, or four years, as specified. (WIC §14107.2)

Existing law makes it a wobbler for every person who commits, or aids, abets, solicits, or conspires with any person to knowingly prepare, make, or subscribe in writing with the intent to present or use it in support of any false or fraudulent claim; to knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit; or knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant, and to be punished by imprisonment to county jail or state prison for two, three, or five years, and by a fine not to exceed \$50,000, as specified. (Penal Code §550]

Existing law makes it a crime for any person to assault; touch an intimate part of; rape, abduct, or seduce; cause great bodily harm or death; inflict cruel or inhumane corporal punishment against; commit lewd or lascivious acts upon; commit sexual penetration upon; commit an act that requires registration as a sex offender upon; commit a crime upon elders, dependent adults, or persons with disabilities; commit a violent felony against; cause cruel or extreme pain and suffering upon; carjack; willfully poison or mingle a harmful substance in food, drink, or medicine; brandish a loaded firearm in a threatening manner against; or commit arson resulting in great bodily injury upon another person, as specified. (PC §206, 215, 220, 243.4, 264.1, 273a, 273ab, 273d, 288, 289, 290(c), 347(a), 368, 417(b), 451(a) and (b), and 667.5(c)]

Existing law makes it a crime for any physician and surgeon, psychotherapist, alcohol and drug abuse counselor, or any person holding himself or herself out as such to engage in a sexual act with a patient or client, or with a former patient or client, and requires imprisonment or a fine, or both imprisonment and fine, as specified. (BPC §729)

This bill provides that before issuing a license for an alcoholism or drug abuse recovery treatment facility, the DHCS shall conduct a state and federal criminal history background check for the applicant.

This bill provides that the applicant shall submit a set of fingerprints to the DHCS at a date determined by, and in a manner determined by, the department.

This bill provides that an applicant who has a criminal conviction or pending criminal charge shall request the appropriate entities to provide documentation regarding the conviction or charge directly to the DHCS with sufficient specificity to enable the department to make a determination as to whether they should grant a waiver. DHCS may grant a waiver if the department

determines that the applicant is capable of complying with all statute and regulations regarding licensure for an alcoholism or drug recovery or treatment facility and granting the waiver will not endanger the public health, safety or welfare.

This bill provides that a past criminal conviction or pending criminal charge shall not serve as an automatic exclusion for licensure. The department shall evaluate the circumstances leading to a criminal conviction or pending criminal charge and determine if the applicant meets all other requirements in determining approval or denial of the application for licensure.

This bill provides that the following persons shall not be issued a license pursuant to this chapter:

- A person who has voluntarily surrendered his or her medical license, or who has had his or her medical license revoked.
- A person who has been convicted of: Medi-Cal fraud; fraud for a health care benefit; making a fraudulent claim.
- A person who has been convicted of assault to commit rape; sexual battery; rape in concert; child abuse; felony child abuse on a child under the age of 8; corporal injury on a child; lewd act on a child; foreign object rape; any offense for which a person has to register as a sex offender; elder abuse; or a violent felony under 667.5.
- A person who has been convicted of sexual abuse by a doctor, psychotherapist or drug and alcohol abuse counselor; torture; carjacking; poisoning; brandishing a firearm; arson.

This bill provides that DHCS may grant a waiver for applicants who have been convicted of a listed offense after evaluation of the circumstances leading to a conviction and behavior and circumstances post-conviction.

This bill provides that in determining whether or not to grant a waiver DHCS shall take into consideration the following factors as evidence of good character and rehabilitation:

- The nature and seriousness of the conduct or crime under consideration and its relationship to their licensure duties and responsibilities.
- Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
- The period of time that has elapsed since the commission of the conduct or offense and the number of offenses.
- The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanction lawfully imposed against the person.
- Any rehabilitation evidence, including character references, submitted by the applicant.
- Circumstances surrounding the commission of the offense that would demonstrate the unlikelihood of repetition.
- An order from a superior court where the conviction has been dismissed or expunged.
- The granting by the Governor of a fully and unconditional pardon.
- A certificate of rehabilitation from a superior court.

This bill provides that if DHCS denies an application for licensure on the basis of a criminal history background check conducted pursuant to this section, the applicant may appeal the department's decision.

COMMENTS

1. Need for This Bill

According to the author:

As the opioid crisis has expanded nationally, addiction has soared and unscrupulous rehab operators have rushed in to exploit mandatory mental health treatment coverage required by the Affordable Care Act.¹ In a comprehensive investigation by the Southern California News Group (SCNG), it found that the state's difficulty in regulating the industry makes it too easy for almost anyone to open a treatment center and charge health insurers for hundreds of thousands of dollars per client, without any requirements to ensure qualified people are providing safe care and treatment.

According to the SCNG, the following are complaints and issues that they've specifically identified in this industry:

- “Drug counselors and others can run sober living homes and some types of treatment centers without passing any kind of criminal background check. Even people convicted of drug crimes are allowed, under current state law, to get a license to own and/or operate drug and alcohol rehab centers.
- Addicts and families considering rehab have no easy way to check the records of treatment centers, recovery homes or their owners or staff.
- The state lags behind others in adopting reforms to crack down on treatment center operators who exploit vulnerable addicts and focus more on profits than on effective care.”²

Existing law provides for the licensure and regulation of alcoholism or drug abuse recovery or treatment facilities, as defined, by the State Department of Health Care Services (DHCS). DHCS has sole authority to license facilities providing 24-hour residential nonmedical services to eligible adults who are recovering from problems related to alcohol or other drug abuse.

Licensure is required when at least one of the following services is provided: detoxification, group sessions, individual sessions, educational sessions, or alcoholism or drug abuse recovery or treatment planning. Existing law does not require owners, operators, or employees of RTFs to receive a criminal record clearance.

Existing law mandates that before an individual can obtain a community care license, or provide services, work or resident in a community care facility, he/she must receive a criminal record clearance from the Caregiver Background Check Bureau. An individual convicted of a crime other than minor traffic violations is disqualified unless the California Department of Social Services grants an exemption from the clearance requirement. All convictions other than minor traffic

¹ <https://www.ocreger.com/2017/12/29/rehab-riviera-industry-struggling-to-get-clean/>

² <https://www.ocreger.com/2017/12/17/urine-empire-lax-oversight-expose-flaws-in-california-rehab-laws/>

violations require an exemption, and this includes misdemeanors, felonies and convictions that occurred a long time ago.

SB 902 requires that DHCS conduct background checks before an individual can be issued a license to own or operate an RTF, or before an employee can start work in one of these facilities.

It is imperative that the owners, operators, and employees who exercise control or management of individuals seeking care or treatment in these facilities be cleared through state and federal criminal databases. Background checks for counselors, employees and rehab operators are a vital step to ensuring safe care for individuals staying in RTFs.

The goal of SB 902 is to help stop the industry's bad actors, not those with established records of helping people suffering from addiction. SB 902 allows for flexibility for those who have been convicted of specific crimes, so that the proven value of peer counseling can be protected, but only if the violation occurred more than five years ago and the individual can prove that he/she is no longer a threat to public health, safety or welfare, among other requirements.

2. RFTS

According to the Senate Health Committee Analysis:

RTFs licensed by DHCS, based on what is commonly referred to as the social model, provide recovery, treatment, or detoxification services (the Department of Public Health licenses medical model RTFs known as chemical dependency recovery hospitals). The services provided by these social model RTFs include group and individual counseling, educational sessions, and alcoholism or drug abuse recovery and treatment planning. Social model RTFs are allowed to provide clients first aid and emergency care, and since the passage of AB 848 (Stone) Chapter 744, Statutes of 2015, RTFs can apply to DHCS for an additional license to provide incidental medical services by a licensed physician and surgeon or other health care practitioner, as specified. DHCS licenses about 1,020 RTFs. As part of their licensing functions, DHCS conducts reviews of licensed RTFs at least once every two years, or as necessary; checks for compliance with statute and regulations to ensure the health and safety of clients; investigates all complaints; and has the authority to suspend or revoke an RTF's license for a violation of statute or regulations.

Current law permits DHCS to grant a waiver to a licensed RTF to serve adolescents 14 years of age and older, when the licensee documents in writing that a need for such services exists and adolescent-specific services are otherwise unavailable in the county. RTFs that apply for an adolescent waiver are required to include a plan for the adolescent's continuing education and supervised study time; intake policies and procedures; a copy of the admission agreement used for adolescent residents; policies and procedures for removal and/or discharge of an adolescent from the RTF; policies and procedures for disciplining the adolescent resident; a need for the services in the county; and a CBC for all employees of the RTF who have supervisory responsibility for adolescent residents or frequent or routine contact

with adolescent residents. DHCS is required to determine the suitability of individuals who have been convicted of previous crimes, ranging from previous convictions of any alcohol- or drug-related crimes to felony or misdemeanor crimes perpetrated against a child. Any person who has been convicted of a felony or misdemeanor perpetrated against a child is permanently prohibited from participating in an RTF that serves adolescents. DHCS is required to monitor all subsequent conviction data received from the California Department of Justice (DOJ) for individuals with an approved or conditional CBC.

3. Background Checks

This bill provides that DHCS shall require a criminal background check before issuing a license for an alcoholism or drug abuse recovery or treatment facility.

DOJ maintains the state summary criminal history information and furnishes state summary criminal history information to authorized entities or individuals for employment, licensing, volunteering etc. This bill does not contain language authorizing DOJ to release the information in the case of licensing an alcoholism and drug recovery treatment facility and they do not fall within an existing requirement. The language also does not comply with federal requirements to release criminal background checks.

Not all authorized agencies get all criminal offenses. Some agencies get every offense, such as those employing peace officers; others such as a human resources agency or a person employing an in-home service provider only get convictions that are less than 10 years old. The bill needs to be amended to make the proper authorization and it needs to be decided what category is appropriate for these providers.

4. Prohibitions for employment at an RFT

This bill prohibits individuals convicted of specified offenses from getting a license to run an alcoholism or drug abuse recovery treatment facility, unless a waiver is granted. The prohibited offenses are:

- A person who has voluntarily surrendered his or her medical license, or who has had his or her medical license revoked.
- A person who has been convicted of: Medi-Cal fraud; fraud for a health care benefit; making a fraudulent claim.
- A person who has been convicted of assault to commit rape; sexual battery; rape in concert; child abuse; felony child abuse on a child under the age of 8; corporal injury on a child; lewd act on a child; foreign object rape; any offense for which a person has to register as a sex offender; elder abuse; or a violent felony under 667.5.
- A person who has been convicted of sexual abuse by a doctor, psychotherapist or drug and alcohol abuse counselor; torture; carjacking; poisoning; brandishing a firearm; arson.

There is some overlap in the specifically listed offenses and those that are listed as violent felonies or require sex offender registration.

As noted by some of the opposition, many counselors who work with people trying to recover from drug or alcohol abuse have their own history with abuse and criminal convictions. In addition the Department of Corrections has programs where people become peer counselors with

the intent of being counselors when they leave prison. Some of these people may be incarcerated for drug offenses but often substance abuse problems can be the reason for other offenses such as burglary or robbery, a conviction of which would prohibit a person from getting a license under this bill, unless they received a waiver. Will these prohibitions limit those who can get a license for one of these programs? Should the bill explicitly exempt people who have gotten the counselor certification from CDCR?

5. Waiver

This bill appears to have two waiver provisions. The first states that a waiver can be granted after a review of the documentation or pending criminal charges if the applicant is capable of complying with all the statute and regulations regarding licensure for an alcoholism or drug abuse recover treatment facility and if granting the waiver will not endanger the public health safety or welfare. The second waiver is specific to a waiver of one of the listed offenses and requires a number of things be considered regarding the nature of the conduct and rehabilitation.

Since the second type of waiver is specific to the listed offenses, does that mean that the first type of waiver is needed for any other offense? Thus, does this bill require a waiver for any criminal offense and thus prohibit a license if there is any offense that is not granted a waiver? Or should the bill be clarified that the waiver is only intended and only required for the specified offenses?

The waiver provision provides that the department shall consider an order from a superior court where a person's plea has been withdrawn after probation, whether the person has been granted a pardon or whether a certificate of rehabilitation has been ordered. The criminal background check from DOJ will not include things that have been pardoned or where a certificate of rehabilitation has been ordered. The bill lists some of the sections where cases have been dismissed but not all of similar sections. Some of these may not be sent by the DOJ. Some of the sections are specifically prohibited from being used for employment purposes by Labor Code Section 432.7.

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