

December 8, 2015

CCL – Informational Memo
2015-04

TO: CHILDREN'S RESIDENTIAL PROGRAM STAFF
ALL GROUP HOMES
ALL COMMUNITY TREATMENT FACILITIES
ALL TRANSITIONAL HOUSING PLACEMENT PROVIDERS
ALL RUNAWAY AND HOMELESS YOUTH SHELTERS
ALL SHORT TERM RESIDENTIAL TREATMENT CENTERS
(Effective January 1, 2017)

FROM: *Original signed by Pam Dickfoss*
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Community Care Licensing Division

SUBJECT: **ASSEMBLY BILL 388 (CHAPTER 760, STATUTES OF 2014) JUVENILES**

This Information Release summarizes portions of Assembly Bill (AB) 388, which became effective on January 1, 2015, that are relevant to the following licensed children's residential facilities: group homes, community treatment facilities, transitional housing placement providers, and runaway and homeless youth shelters. It also includes an overview of licensees' responsibilities, including when, what, and how to make incident reports in accordance with the requirements of AB 388.

Assembly Bill 388

According to the author of AB 388, the intent of the law is to "protect children and youth in foster care from being arrested and having charges filed against them due to minor incidents at group homes." AB 388, among other things, requires:

- Facilities to report to California Department of Social Services (CDSS) all incidents concerning a child in the facility involving contact with law enforcement and to provide CDSS with a follow-up report, as specified. ([HSC § 1538.7\(a\)](#))
- The CDSS is to conduct a case management inspection (in addition to any other required inspection) of any facility reporting an above-average number of law enforcement contacts due to specific alleged crimes committed by children residing in the facility, as specified. ([HSC § 1538.7\(b\)](#))

- The CDSS' Community Care Licensing Division (CCLD) is to provide a report to its Children and Family Services Division and to any other public agency that has certified the facility, if CCLD conducts a case management inspection based upon a facility's contact with law enforcement. ([HSC § 1538.7\(c\)](#))
- The CDSS is to report information on reported law enforcement contacts to the public annually, along with information on the number and outcomes of complaints against affected facilities. ([HSC § 1536](#))
- The Department of Health Care Services (DHCS), upon notification by CDSS of any adverse licensing action taken against a group home that provides mental health treatment services, as specified, to review its certification of the group home to provide those services, as specified. ([WIC 4096.5\(e\)](#))
- The CDSS, by January 1, 2016, in consultation with specified stakeholders and the public, to develop additional performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors, as specified. ([WIC § 11469\(f\)](#))

For more information related to this law, see the legislative history for [AB 388](#) as well as the bill [Fact Sheet](#).

AB 388 Reporting Requirements

Group homes, community treatment facilities, transitional housing placement providers, and runaway and homeless youth shelters are required to report to CDSS **every** incident in which law enforcement is contacted, regardless of the type or seriousness of the incident. Licensees are also required, within six months, to submit to CDSS a follow-up report containing details of **every** incident, including demographic data on the children or youth involved, whether a child residing in the facility was accused of committing a crime (except for a curfew violation), whether staff were involved, and any outcomes of the incident (such as placement changes or staff discipline). ([HSC § 1538.7\(a\)](#))

- **How to Make Reports:** Licensees who are required to make incident reports under AB 388 should follow the directions below.
- **Who Must Report:** The following facilities must make incident reports under AB 388: group homes, community treatment facilities, transitional housing placement providers, and runaway and homeless youth shelters.

Note: “Transitional housing placement providers” **does** include state-licensed THP providers operating Transitional Housing Placement programs and Transitional Housing Placement-Plus-Foster Care (THP+FC) programs, but **does not** include county-approved Transitional Housing Program Plus (THP+) providers, who serve only former foster children.

Note: Assembly Bill 403 (Stone), legislation signed subsequent to AB 388, will add short term residential treatment centers to the list of facilities to which Health and Safety Code section 1538.7 applies.

- **When and What Must Be Reported:** *Previously, only some incidents needed to be reported.*

Licensing regulations (22 CCR §80061 and, for group homes, 22 CCR §84061) require reports to be filed for incidents which meet certain criteria, such as “any unusual incident or client absence which threatens the physical or emotional health or safety of any client” or “any suspected physical or psychological abuse of any client.”

Under AB 388, a facility listed above must report every incident concerning a child in the facility that involves contact with law enforcement. It does not matter how serious the incident is; and it does not matter whether the contact was made at the facility’s discretion, or in order to comply with a state or local requirement, or in accordance with the facility’s own policies. If law enforcement is contacted for any reason as a result of an incident, a report must be made. A report must also be made if the law enforcement contact results from a call made by other children in the facility or by a third party, or if the law enforcement contact occurs offsite. **This report must be made as soon as possible after the incident and no later than the next business day.** The initial report may include a detailed description of the incident, and any other information (such as the identities of those involved) that is immediately available.

- **A facility listed above must make a follow-up report for every reported incident within six months of the incident.** This follow-up report must contain specific information about the incident, as follows:
 - The type of incident
 - If the incident involved an allegation that a child residing in the facility committed a crime (other than a curfew violation)
 - Whether staff, children or both were involved
 - The gender, race, ethnicity and age of children involved

- Outcomes, including arrests, removals of children from placement, or staff discipline

Note: Although the law requires that the follow-up report be submitted no later than six months after the incident, it can be filed sooner (or even immediately), if all the outcomes and other information are known. The law also requires that the follow-up report contain the information listed above, even if it was already included in the initial report.

Case Management Inspection

The CDSS must take all of the follow-up reports filed by providers and use them to determine, for each provider type, the average number of incidents in which a resident was accused of committing a crime and law enforcement was contacted. The CCLD must then inspect, at least annually, any facility which has an above-average number of these contacts (when taking into account the facility's licensed capacity). This inspection will be in addition to (not in place of) any other inspections required. ([HSC § 1538.7\(b\)](#))

It is important for licensees to remember that, while AB 388 requires that every incident which results in a law enforcement contact be reported to CDSS, those reports that do not involve an alleged violation of a crime (such as runaway/AWOL situations) will not be considered when calculating whether or not a facility is subject to an additional inspection.

If CCLD inspects a facility due to a higher-than-average number of reported law enforcement contacts, it must report the results of that inspection, both internally to CDSS' Children and Family Services Division and to any other state agency which has certified a component of the provider's program. ([HSC § 1538.7\(c\)](#))

Publication of Information

The CDSS must also annually publish data on the number, types and outcomes of all law enforcement contacts reported by affected providers. At the same time, CDSS must publish, for each affected provider, information on the number, type and outcome of all licensing complaints, including citations, fines, exclusion orders, suspensions, revocations or surrenders. ([HSC § 1536\(a\)\(2\)](#))

The DHCS Review of Group Home's Mental Health Certification

When DHCS receives a report from CDSS that a licensing action has been taken against a Rate Classification Level 13 or 14 group home, as the result of an inspection

due to higher-than-average law enforcement contacts, DHCS must then review its certification of that facility's mental health treatment services. ([WIC § 4096.5\(e\)](#))

Although AB 388 requires certain categories of facilities to report all law enforcement contacts, contacts for incidents that do not involve an allegation of a crime being committed by a youth do not count in the calculation which triggers a case management inspection. Affected licensees should bear in mind that it is not the intent of either CDSS or advocates to discourage licensees from contacting law enforcement when appropriate or required. AB 388 is intended, in part, to protect children from being arrested and having charges filed against them due to minor infractions.

The CDSS is in the process of developing a form that licensees may use to comply with AB 388 and will be promulgating regulations. Further, in accordance with the requirements of AB 388, CDSS has convened a workgroup to develop the performance standards and outcome measures as specified in the bill.

As CDSS has received a number of inquiries from stakeholders and other interested parties expressing questions regarding the implementation of AB 388, attached are responses to frequently asked questions. If you have any questions, please contact Marisa Sanchez, Manager of the Children's Residential Policy Unit, at (916) 651-5380, or by e-mail at marisa.sanchez@dss.ca.gov.

Attachment

AB 388 (Chapter 760, Statutes of 2014)

Frequently Asked Questions

Question 1: Are Transitional Housing Program-Plus (“THP+”) providers required to report law enforcement contacts under AB 388?

Response: AB 388 requires law enforcement contact reporting by several types of licensed community care facilities, including Transitional Housing Placement Providers operating a program for 16 to 17 year old foster children [Transitional Housing Placement program (“THPP”)] or nonminor dependents [Transitional Housing Placement-Plus-Foster Care (“THP+FC”)].

In contrast, THP+ is a county-operated program dedicated exclusively to former foster children, and its providers are not licensed by the state. Therefore, THP+ providers are not required to make reports under AB 388.

Question 2: Will CDSS be providing guidance to licensees on how to format the reports that they are required to submit, and how will CDSS be collecting this information?

Response: To aid licensees in making AB 388 reports, CDSS is developing a specific form which will enable facility staff to report the specific information required. Licensees may continue to use either CDSS’ or their own incident report forms, provided that they include all of the data items that AB 388 requires. Additional information and direction is included in this CCL Information Release to affected licensees.

Question 3: AB 388 requires a facility to indicate in its reports whether or not a child residing in the facility allegedly committed a crime described in Welfare and Institutions Code Section 602. What does this mean in plain English? What crimes are included in this requirement?

Response: A crime described in Welfare and Institutions Code Section 602 is any state law or local ordinance, except an age-based curfew ordinance. If a facility contacts law enforcement and makes an accusation that a child residing in the facility has committed any kind of crime besides being out past curfew, it must say so in its AB 388 follow-up report.

Question 4: If a facility contacts law enforcement when a child runs away or goes “AWOL,” does that mean that it has to submit a report under AB 388 every time this happens?

Response: Yes. AB 388 requires that a report be made every time law enforcement is contacted, regardless of what kind of incident occurred. However, it is important to remember that running away or going AWOL is not a crime, and so when making its report the facility must indicate that it has not made an allegation that a child residing in the facility has committed a crime.

Question 5: Does a facility need to report a law enforcement contact even if law enforcement doesn’t dispatch a unit to the facility?

Response: Yes. The only criterion for making a report under AB 388 is that law enforcement is contacted. Law enforcement’s response does not change this requirement.

Question 6: AB 388 requires facilities to provide details on the outcomes of an incident in a follow-up report, but a facility might not know every outcome stemming from an incident. How do facilities handle this?

Response: Facilities should report any outcomes with which they are directly involved, or which they have knowledge of (a child was arrested or removed from placement, a staff member was reprimanded, etc.), but cannot be expected to report outcomes of which they are not aware. For example, a facility could report as an outcome that a child was removed by law enforcement; but if facility staff does not know where the child is being detained, or his/her status, that information is not expected to be included.

Question 7: Can follow-up reporting be done sooner than six months after an incident?

Response: Yes. AB 388 requires that a follow-up report be submitted within six months of an incident, meaning a facility can make the follow-up report at any time within the six months following an incident if all of the outcomes have occurred. If an incident is resolved immediately and has no pending outcomes, a facility can submit its initial and follow-up reports concurrently.

Question 8: How does CDSS calculate what a “greater than average” number of law enforcement contacts is, when determining whether or not a facility must be inspected?

Response: The CDSS is currently developing a methodology which it will use to make these determinations. AB 388 does require that the determination be made based upon a facility's capacity, which means that large facilities will not be disadvantaged by having a higher total number of law enforcement contacts than facilities which care for far fewer children.

Question 9: How will CDSS make the information required by AB 388 available to the public?

Response: The CDSS is currently examining methods of making data on law enforcement contacts and complaints available to the public through the Department's public website.

Question 10: How and when will CDSS fulfill its obligation to develop performance standards and outcome measures to reduce unnecessary law enforcement contacts?

Response: The CDSS has convened a stakeholder workgroup to begin the development of these standards and measures. Meetings will be called as needed.

Question 11: What is meant by law enforcement contact? Does it mean every contact or just those contacts resulting from calls initiated by facility staff or residents? Does a provider have to report when a child who resides in their facility is arrested at school, for example?

Response: Health and Safety Code section 1538.7(a) requires a report "upon the occurrence of any incident concerning a child in the facility involving contact with law enforcement." It does not limit reporting to incidents in which law enforcement was responding to a contact generated from within the facility. However, only law enforcement contacts involving an alleged violation of a crime described in Welfare and Institutions Code section 602 by a child residing in the facility will be used to determine whether a case management inspection is warranted.

Question 12: Does AB 388 apply to short-term residential treatment centers (STRTCs) too?

Response: While STRTCs were not included in AB 388, Assembly Bill 403(Stone), enacted on October 11, 2015, added short term residential treatment centers to the list of facilities to which Health and Safety Code sections 1536 and 1538.7 applies. Therefore, STRTCs must comply with the reporting requirements described in this information release.