

RESOURCE FAMILY APPROVAL (RFA) BACKGROUND CHECK

FREQUENTLY ASKED QUESTIONS (FAQs)

Exempt Individuals

1. Who is exempt from RFA background check requirements?

An applicant and any adult, other than a nonminor dependent, who resides or is regularly present in a resource family's home must be printed, unless exempted pursuant to Written Directives (WDs) section 6-03A(f). However, 6-03A(g) permits a county to print an individual who is otherwise exempt from printing, provided that there is contact that may pose a risk to the health and safety of a child or nonminor dependent.

Required to Print

2. Can we have the applicant's best friend fingerprint, since we may use her for childcare in the future?

Not necessarily. The County cannot require the best friend to fingerprint unless she resides or is regularly present in the applicant's home. (Please refer to WDs 6-03A.) The WDs contain standards for how a child shall be cared for outside of the home. (See Article 11 of the WDs.) These standards are separate from the criminal record background check process for RFA approval. A consideration of an applicant's ability to meet these standards is relevant to the county's Permanency Assessment.

3. We have an applicant whose bedridden mother resides in the home. The Department of Justice (DOJ) requires that the fingerprints be submitted twice before doing a manual name search. Is there any way around this? What if the individual's hands are curled up so it's hard to submit prints. Is there an exception to this?

There is no exception to the fingerprint requirements. Refer to the Background Assessment Guide (BAG) section 105, which provides instructions around the different options that are available to individuals who may have medical reasons preventing them from submitting fingerprints. Being bedridden does not imply that an individual cannot submit prints. The County should attempt to send a mobile live scan out to the home or provide the applicant with information around mobile live scan services.

- **If the individual's medical condition includes having no fingers or causes the hands to be atrophied to the point of being unable to submit to a fingerprint roll, refer to BAG section 105(b) for instructions on submitting KNUCKLE SMUDGES using the FD-258 fingerprint card. This must be submitted and rejected twice before DOJ will conduct a name search. The BCIA 8020 must be submitted for the FBI name search.**

- **For individuals who are physically incapable of submitting any kind of print, e.g. a dual amputee, submit the BCIA 9010. DO NOT SUBMIT THE BCIA 9010 UNDER ANY OTHER CIRCUMSTANCES.**
4. If a relative was previously approved through the Relative Approval process and we still have the rap-back service in place, does the relative need to fingerprint again?

Yes, the individual needs to fingerprint under the RFA application type. The county did not have the authority to continue receiving the subsequent arrest notification (i.e., rap-back) on this individual, and the county should have sent the No Longer Interested (NLI) notification to DOJ once the approval was no longer valid. (See also Question #7 below.)

Transfers

5. Our County accepted a transfer case from another county. This was a home approved through the Relative Approval process, and the family is the permanent plan for the child. We are planning on doing a RFA conversion with the family. Can the other county share their exemptions with our county?

The county may not share criminal history documents received from the DOJ (i.e., CORI or rap sheets). However, a county may share their exemption analysis and decision, as well as court documents and arrest reports that were ordered as part of the exemption decision process. Rap-back service (i.e., subsequent arrest notification) needs to be transferred from the old county via a request to DOJ (see BAG section 122). Please refer to [ACL 17-16](#) for RFA conversion procedures.

Exemption Denials

6. If an individual submits fingerprints and it is likely the individual will not be granted an exemption, can the county tell that individual to withdraw from the RFA process rather than proceed with the exemption process and deny?

The county should refrain from making premature determinations based on an individual's criminal history. Unless there is a conviction for a non-exemptible crime, the individual has the right to request an exemption, and the county must evaluate the request for evidence of present good character and rehabilitation.

The individual may voluntarily withdraw from the process. However, a county may not encourage individuals to withdraw or halt the application process based solely on live scan results. Doing so deprives the applicant of due process by circumventing his or her right to request an exemption and his or her right to appeal and a hearing with Office of Administrative Hearings (OAH) or State Hearings, as applicable.

Previous Exemptions

7. If a current RFA applicant was previously granted an exemption through the Relative Approval or Licensing program, can we use their old exemption?

A previously granted exemption can only be used if the exemption is current, meaning there is a child placed and the family is converting an existing Relative/NREFM approval or FFH license (please refer to [ACL 17-16](#) for RFA conversion procedures). If the applicant is not currently licensed or approved, the applicant needs to go through the background check process just like all initial RFA applicants. The subsequent arrest notification for the prior approval/licensure should have been canceled by sending the NLI to DOJ. The individual needs to submit new live scan fingerprints, and the county needs to send out the *Exemption Needed Notification* letter/notice if any convictions appear on the current CORI and/or RFA 01B. (The old CORI cannot be considered.) The county can, however, rely on previously obtained court documents or arrest reports if the same arrests/convictions appear again on the current CORI. Statements, references, and all other exemption request documents need to be current.

Adam Walsh Crimes

8. An applicant was convicted of a crime against a child. Why is this Penal Code (PC) section not in the BAG's Adam Walsh Non-Exemptible list? This was a felony conviction.

The Adam Walsh list is not exhaustive and only includes a list of crimes that CDSS has deemed *likely* to meet the descriptive criteria laid out in Health and Safety Code (H&SC) section 1522(g)(2)(A)(iii). The PC is constantly being amended, thus a crime may be considered non-exemptible under the Adam Walsh Act's broad descriptive criteria but not listed in the most recent version of the BAG. Consult with your County Counsel or assigned RFA county liaison if you are unsure whether a crime is exemptible. As always, a legal consult is required before any Notice of Action (NOA) is served, including an exemption denial for a non-exemptible crime.

Checking Other Countries

9. How do we check someone's criminal background if they have lived out of the country in the past five years?

There is no statutory requirement to obtain child abuse/neglect or criminal history information from countries outside of the United States. The background check process includes the live scan fingerprint check (which includes DOJ, FBI, and CACI), RFA 01B, and checks of Megan's Law, LIS/AARS, and DMV (if transporting a child). The RFA WDs don't contemplate international child welfare or criminal history searches, so there is no requirement for someone who has lived internationally to prove they don't have child welfare or criminal history in another country. With that being said, the

county might want to consider an individual's criminal history outside of the required parameters if criminal history is self-disclosed (RFA 01B) or mentioned during conversations or interviews, etc. Since international convictions are not contemplated by the RFA background check, these kinds of self-disclosures should be considered as part of the family evaluation assessment. If the person self-discloses an international conviction of concern, the county may be able to take action based on the underlying conduct following a legal consult.

“Dismissed” or “Expunged” Convictions

10. Oftentimes when conducting criminal record checks, we come across court cases where an individual pled and entered a conditional settlement (i.e. remain free from further arrests and convictions for 6 months and the charges are then dismissed), but there is no indication it was dismissed per PC section 1203.4. Would such an offense be considered a conviction for exemption purposes?

If there is a plea of guilty followed by the imposition of sentence (i.e. incarceration or probation), it should be treated as a conviction for RFA background check purposes. (H&SC section 1522(f).) A charge alone, without a plea and sentence, does not constitute a conviction for RFA purposes. Entering a conditional settlement also does not mean that the individual petitioned the court to have the conviction set aside and dismissed per PC section 1203.4. It could mean that the individual was granted a deferred entry of judgment or a diversion program. It is always best practice to obtain court records to determine what the actual disposition was.

11. If an individual was convicted of a non-exemptible crime which was set aside and dismissed per PC section 1203.4, is the individual entitled to a clearance or supposed to go through the exemption process?

The individual is not eligible to request an exemption for the non-exemptible conviction. The County would need to schedule a legal consult prior to sending the Notice of Action (NOA). Remember that any individual who has fulfilled the conditions of his or her probation is able to petition the court to have the conviction set aside and dismissed pursuant to PC section 1203.4 or 1203.4a. However, this does not mean that the crime did not occur. The County should process the entry as it normally would for any conviction and ignore the 1203.4 or 12.03.4a “dismissal” for purposes of the RFA background check.

Pardons and Certificates of Rehabilitation

12. Under 6-03B(h), governor's full and unconditional pardon and Certificate of Rehabilitation from the superior court may support a determination that an individual has been rehabilitated and is presently of good character so, even if the individual has either, the County must still look further?

If an individual has been granted a governor's pardon for a conviction, the denial of an exemption cannot be based on the record of this criminal conviction and the conviction may not serve as the basis of further

investigation. The entry is no longer considered a conviction for purposes of the RFA background check. Adverse action based on a pardoned conviction is not authorized by statute and is prohibited by law. If the county has questions or doubts about the status of a conviction, consult with either County Counsel or assigned RFA county liaison.

An individual who has obtained a Certificate of Rehabilitation was able to show the court that he or she has met specific criteria, which may be relevant to a county's evaluation of an exemption request *for an exemptible crime*; however, this Certificate does not make the individual eligible to request an exemption if the conviction was for a non-exemptible crime [H&SC 1522(g)(2)(A)]. Refer to BAG section 112. As always, utilize a legal consult prior to issuing any NOA.

Immigration Information

13. If a CORI shows a crime related to unlawful entry into U.S., but there is no clear indication of conviction, arrest, etc., does this situation require an exemption? How do you handle immigration type CORI results?

Look to the disposition entry on the rap sheet, to determine whether a penalty, jail time, or probation was imposed. Generally, these are good indicators that there was a conviction. However, be mindful that a detention pending deportation proceedings is not the same as serving time for a criminal conviction. The individual must request an exemption for any conviction(s), other than a minor traffic violation or convictions covered by the Marijuana Reform Act (see BAG section 110), and must be evaluated for present good character and rehabilitation regardless of immigration status. If the rap sheet indicates a "deportation" or "deported to country of origin," the individual was most likely returned to his or her country of origin. (See also Question #14 below.)

14. If an individual was deported, is an exemption required?

If an individual's rap sheet shows a deportation, this does not constitute a conviction. He or she would not need an exemption and is entitled to a clearance regardless of his or her immigration status, provided there is no additional arrest or conviction indicated in the individual's criminal history information. A County may choose to investigate a deportation arrest and assess for conduct. However, approval of a resource family should not be delayed by this discretionary investigation, unless the arrest was for a crime specified at H&SC section 1522(e).

Evidence and Certified Documents

15. Who is responsible for obtaining the arrest records and court records?

The individual is responsible for obtaining all documents listed in the exemption needed notice, including certified records of conviction from the

superior court in which the individual was convicted (refer to BAG section 119). Note that law enforcement agencies will often refuse to release arrest reports to private individuals. Pursuant to the WDs, the county is responsible for requesting a law enforcement record if the individual is unable to obtain it or the county determines that it is too burdensome for the individual to obtain the record. Ultimately, the county must obtain any documentation, including certified arrest and court records, that will be used as evidence to support a denial if the respondent appeals. RFA Due Process trainings address evidence issues in greater detail.

Arrest-Only Crimes

16. Are all arrest-only crimes required to be investigated even if the incident did not result in a conviction?

No. Statute mandates that all serious arrests specified in H&SC 1522(e) be investigated prior to a clearance being granted. However, the county has the discretion to investigate any other arrests shown on the CORI and evaluate the underlying conduct provided that the resource family approval is not delayed due to a discretionary arrest investigation (refer to BAG section 113).

Warrants

17. If the CORI shows that a person has a warrant, can we close the case until the person resolves the criminal matter?

It depends. Ceasing to process the case would only be appropriate under certain circumstances, such as a warrant for a particularly concerning crime including, but not limited to, the non-exemptible crimes list. In general, moving forward with a clearance or the exemption process is ideal if doing so would not jeopardize the health and safety of a child. For example, a warrant issued for a failure to appear stemming from a minor traffic violation is unlikely to significantly affect the health and safety of a child and, therefore, should not be used as a reason to delay approval. If a clearance or exemption is issued and the warrant subsequently results in a misdemeanor or felony conviction, process as a subsequent conviction. Refer to BAG section 116.

No Fishing

18. Does a County have discretion to use additional databases/tools for RFA background checks?

No. The county does not have discretion to supplement the background check process with information from additional databases, such as each county's superior court website. Such tools should not be used to deny or delay a criminal record clearance when the rap sheet, RFA 01B, and other components of the background check specified in the WDs indicate that the individual has no criminal history. Conversely, if the rap sheet or RFA 01B indicates a conviction or serious arrest, information may be obtained from other sources

as part of a county's investigation or to confirm the final disposition. Also, keep in mind that additional information may be appropriate to consider in other components of the comprehensive assessment, including the Family Evaluation.

Placement v. Approval

19. Courts are imposing placement orders and releasing minors to potential applicants BEFORE we even speak to them and/or begin the RFA process. Is this considered an "emergency placement?" Should we treat it as such? Should we immediately remove placements if CLETS hits occur?

The courts have always exercised their right to order placement of a child regardless of the approval status of a home. A county may evaluate the home for an emergency placement pursuant to Welfare and Institutions Code sections 309 and 361.4; however, a court-ordered placement is not considered an "emergency placement" as the requirements were not met prior to the placement occurring (i.e., CLETS/child abuse checks, Home & Grounds Inspection – please refer to WDs section 4-08).

The family is unable to receive IV-E foster care funding prior to resource family approval. For Fiscal Year (FY) 2018-19, Emergency Caregiver (EC) funding will be available for emergency or compelling reason placements made on or after July 1, 2018 and up to June 30, 2019 and will be funded through the EA program (or a combination of state and county funds if the child is determined to be ineligible for EA), for up to 180 days (or up to 365 days with good cause), or until the emergency caregiver is approved or denied, whichever is first. The county will be responsible for the non-federal share of the payment. Refer to [ACL 18-75](#) which outlines the provisions of Assembly Bill (AB) 1811.

Remember that placement is separate from approval, and whether to place prior to RFA approval is within a county's discretion. If a CLETS check indicates a non-exemptible crime, the child may not be placed in the home on an emergency basis. A full live scan fingerprint check is required within five business days of any emergency placement or within ten calendar days from the CLETS check, whichever is sooner. The exemption process, including written notifications, must be initiated as soon as possible. This process is necessary to provide adequate due process for denied exemptions and to meet the "substantial and convincing evidence" standard for approved exemptions. Refer to the *Temporary (Emergency) Placement Protocol* in the Appendix of the BAG.

20. The CLETS check was completed for a relative of a dependent child. He only had one conviction, so can we just grant an exemption through the simplified exemption process before we make an emergency placement?

No. The CLETS information is used solely for making placement decisions. The County cannot grant an exemption based on the CLETS check. If an emergency placement is made, a live scan fingerprint check must be initiated

within 5 business days of the emergency placement or within 10 calendar days following the CLETS check, whichever is sooner [refer to Welfare and Institutions Code (W&IC) section 361.4]. Proceed with the appropriate exemption process *based on the live scan results*. (See also Question #21 below.)

21. Do we use the procedures outlined in the BAG whenever there are hits on the CLETS?

No. The BAG does not apply to emergency placements or affect a county's ability to make a placement. The BAG is only to be used for the background check process for RFA approval and applies only to RFA applicants and associated individuals. [Refer to BAG section 100(b) and W&IC section 361.4.]