

# **RESOURCE FAMILY APPROVAL (RFA): BACKGROUND ASSESSMENT GUIDE (BAG)**



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### 100 INTRODUCTION

**This Resource Family Background Assessment Guide is intended to be the sole guide for Resource Family Approval (RFA) background check procedures. For purposes of this guide, “reviewing agency” refers to the entity conducting the background checks resulting from a Resource Family application. In addition to counties and CDSS, this document may be used as a guide for an agency conducting background checks in accordance with federal IV-E standards, including tribes and counties conducting background checks on behalf of a tribe. Reviewing agencies should no longer consult the state’s Caregiver Background Check Bureau Evaluator Manual.**

The content of this guide can also be found in the applicable statutory and written directive authority. See Welfare and Institutions Code (W&IC) sections 16519.5, et seq. and the Resource Family Approval Written Directives.

The criminal record background check process is intended to ensure that applicants, as well as persons residing or regularly present in the home, do not present a threat to the health and safety of a child or nonminor dependent. An individual’s criminal history may be one factor in determining whether a person is of good character. For example, it may indicate a history of violent or dishonest conduct or a history of substance or alcohol abuse.

The background check process provides individuals with criminal history an opportunity to prove that they are rehabilitated and of present good character. Thus, if a person has a criminal conviction or a history of criminal conduct such as an arrest that did not result in a conviction, the reviewing agency must determine whether or not the person presents a potential health and safety risk to a child or nonminor dependent.

It is important to note that the initial burden of proof requires the agency to prove the criminal conviction or conduct. The agency should obtain arrest and court records to determine the true nature of the criminal conviction or conduct. Unless an individual qualifies for a simplified exemption, once the conviction is proven, the individual must demonstrate he or she is rehabilitated and of present good character necessary to safely care for children or nonminor dependents in out of home care.

#### **a. Senate Bill (SB) 213**

Effective 1/1/18, SB 213 made significant amendments to the criminal record exemption decision standards and processes as specified at Health and Safety Code 1522(g). For Resource Family applicants and all adults residing or regularly present in the home, the simplified exemption process is available, at the reviewing agency’s discretion, for all exemptible convictions that do not meet the standard exemption criteria specified in Section 119, *Exemptions*. A simplified criminal record exemption process means that an exemption shall be granted based solely on the live scan fingerprint check and/or any written (RFA 01B) or verbal self-disclosures if the criminal history meets specified criteria. **However**, notwithstanding the fact that an individual qualifies for the simplified criminal record exemption process, due to health and safety concerns, a reviewing agency may choose to require the individual to request an exemption and complete the full exemption process (see section 119, *Exemptions*, for additional details).

### b. Emergency (Temporary) Placement

This guide DOES NOT APPLY TO EMERGENCY PLACEMENTS or affect a county's ability to make a placement. This guide is only to be used for the background check process required for RFA approval, which is separate from placement decisions. Please see the Appendix for information related to Emergency Placement protocol.

## 101 CRIMINAL RECORD CLEARANCE AND EXEMPTION REVIEW

The Department shall provide ongoing oversight of a County's operations related to the Resource Family Approval Program. The Department may, without prior notice, inspect, review, and monitor implementation of the program in a county, including all activities, procedures, records, and forms related to the program.

The Department shall review a random sample of Resource Families in a County for compliance with applicable laws and the Written Directives, which may include a home environment visit. The Department's review shall occur on an annual basis or more often if the Department becomes aware that a County is experiencing a disproportionate number of complaints against individual Resource Families.

Reviewing agencies must record and retain criminal clearance and exemption information. This information should be made available to the Department during its annual review or upon request. It is the agency's responsibility to maintain a log of all background check information including all granted, denied, rescinded, or transferred exemptions. Counties have the option of utilizing the Quarterly County Exemption Report form ([LIC 9210](#)) or another template, which includes the following information:

- The name of the county.
- The year of the tracking log.
- The person's name.
- The Resource Family name and RF ID number, if applicable.
- The person's date of birth.
- The appropriate reporting source: Department of Justice (DOJ), Federal Bureau of Investigation (FBI), self-reported on RFA 01B (Self), or transferred from another approval/licensing agency (Transfer/Conversion).
- Type of exemption. Use the following legend: Standard (ST), Simplified (SM), Conditional (C), Individual (I), Non-Exemptible (N), Denied (D), Transferred (T), or Conversion (CO).
- The year of conviction(s), the type of conviction [Misdemeanor (M) or Felony (F)], and the criminal violation code number and title identified on the rap sheet or conviction records. Include all convictions, both self-disclosed and from the rap sheet, and list one crime on each line.

## 102 CRIMINAL RECORD CLEARANCE

Applicants and individuals residing or regularly present in a resource family home, and not exempted pursuant to Health and Safety Code (H&SC) section 1522(b), must submit fingerprints to the Department of Justice for the purpose of a background check of state and

federal summary criminal record information. [The Request for Live Scan Service \(BCIA 8016\) form must be completed using the RFA applicant type \(RESRCE FAM PER 16519 WI\). An individual with no criminal convictions, serious arrests, or substantiated allegations of child abuse or severe neglect \(CACI hits\) is entitled to a clearance.](#) An individual who has been convicted of a crime, other than a minor traffic violation or a specific marijuana-related conviction, cannot obtain Resource Family approval, reside or be regularly present in a resource family home unless granted a criminal record exemption by the reviewing agency. Reviewing agencies shall evaluate an individual's criminal record, if any, to determine if he/she poses a risk or threat to the health, safety, and well-being of a child in out of home care.

Applicants and adults residing or regularly present in the home at the time of application must have a criminal record clearance or a criminal record exemption (see section 119, *Exemption*) prior to approval.

Subsequent to approval, any new adults who may reside or be regularly present in the resource family home must submit fingerprints and obtain a clearance or exemption prior to initial presence in the home.

### 103 CRIMINAL RECORD STATEMENT (RFA 01B)

[Prior to, or at the time of,](#) the person submitting fingerprints, the individual must complete and sign a *Resource Family Criminal Record Statement* ([RFA 01B](#)) under penalty of perjury. The requirement to sign the statement under penalty of perjury is an important feature of this form, because it informs the individual that it may be used as evidence by the reviewing agency or department in an administrative action if the person provides false or misleading statements in the RFA 01B. This statement requires the person to disclose all prior convictions and specified arrests. Convictions and conduct associated with certain marijuana convictions must be disregarded, as covered by the Marijuana Reform Act of 1977 (H&SC sections 11361.5 and 11361.7).

If the person discloses convictions other than a minor traffic violation or specific minor marijuana convictions over 2 years old (see section 110, *Marijuana-Related Convictions*), he or she cannot be present in the home until an exemption has been requested and granted. The convictions disclosed must be compared with the convictions on the person's rap sheet. Discrepancies and omissions must be factored into the exemption decision (see section 119, *Exemption*).

In cases where the person discloses convictions on the RFA 01B and the convictions do not appear on his/her rap sheet or a clearance is received, the reviewing agency must use the self-disclosure in lieu of or in addition to the rap sheet. Treat the disclosure the same as a subsequent conviction (see section 123, *Arrest and Convictions – Subsequent to Clearance or Exemption*). The person may be subject to removal (see section 125, *Administrative Actions*).

The RFA 01B form may be downloaded from the RFA website and copied: [RFA Forms](#).

### 104 ADMINISTRATIVE ACTION AND LICENSING DATABASES

Reviewing agencies must check prior licensing, criminal record exemption, and resource family approval history of each applicant and all adults residing or regularly present in the home as part of the background check process. The data systems that must be checked include the

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Licensing Information System (LIS), Administrative Action Records System (AARS), and RFA Notice of Action (NOA) Database. The Community Care Licensing (CCL) Division established the LIS/AARS Check Unit (LLCU) to assist in conducting checks for counties and Foster Family Agencies (FFAs). This unit will perform all LIS checks on behalf of all 58 counties, and the counties will conduct their own AARS and NOA Database checks. However, the LLCU will conduct LIS, AARS, and NOA Database checks on behalf of the Foster Family Agencies (FFAs) for RFA.

If the individual is identified as having been involved in an administrative action, the worker will need to obtain more information about the action to assess how that prior action affects their current case. The databases contain information regarding the action and documents including, but not limited to, Exclusion Orders, Position Statements, Accusations or Statements of Issue, Decision and Orders, Stipulated settlement agreements (i.e., Stipulations), and RFA NOAs. The databases will provide information about actions that have occurred at any point in the past, even if the individual did not appeal or file a notice of defense or has been subsequently allowed to become licensed, approved, placed on the TrustLine or Home Care Aid registry, return to work, or be present in a facility or home. The databases contain limited information about pending actions; therefore, you may need to contact the Department's Legal Division to obtain additional information. In addition, it is important to note that the databases do not contain records regarding Foster Family Agency (FFA) de-certifications or rescissions of approval taken by the FFA on its own without Department involvement. A reviewing agency may obtain information regarding FFA-only de-certifications or rescissions by contacting the FFA directly.

A reviewing agency may cease any further review of an application when an individual has had a previous application denial within the preceding year, or when the individual has had a previous rescission, revocation, exemption denial, or exemption rescission by the Department or a County within the preceding two years. However, the reviewing agency may continue to review an application if it has determined that the reasons for the previous denial, rescission, or revocation were due to circumstances or conditions which have either been corrected or that no longer exist. If an individual was excluded from any resource family home, a registry, or any facility licensed by the Department, the reviewing agency shall cease review of the individual's application unless the excluded individual has been reinstated by the Department pursuant to Government Code Section 11522 and Health and Safety Code section 1558(h) [See Welf. and Inst. Code section 16519.5(c)(7).] The cessation of review shall not constitute a denial of the application for purposes of this section or any other law. No due process is required and no NOA is necessary, as the authority to cease processing results from the prior administrative action and due process was provided at that time.

Resources and tutorials on how to read LIS reports and how to conduct AARS checks are available on the Department's website:

<http://www.cdss.ca.gov/inforesources/Childrens-Residential/Resources-for-Providers/LIS-LAARS-Check-Unit>

### **a. Administrative Action Records System (AARS) and Notice of Action (NOA) Database**

Resource Family approval requires a check for prior Resource Family and licensing-related administrative actions contained in the Administrative Action Records System (AARS) and Notice of Action (NOA) databases maintained by the Department. The NOA database is used to track NOAs denying or rescinding approval, denying or rescinding an exemption, or exclusion

orders. Documentation of this check shall be recorded on the [RFA 02 Resource Family Background Checklist](#).

Each County has been provided access information to AARS, and the designated County system administrator should be contacted for assistance in accessing the system. Detailed instructions about the databases can be found in the User Manual contained within AARS.

### (1) Administrative Action Status

If a match is obtained, the system will indicate the current status for each administrative action as follows:

- (A) AA – Excluded: A Decision and Order, Stipulation, or exclusion order that was not appealed has been entered to exclude an individual from a facility or resource family;
- (B) AA – Revoked, Rescinded or Denied: A Decision and Order, Stipulation or other final decision has been entered to deny or revoke an exemption, license, certificate, registration or to deny or rescind a resource family approval;
- (C) AA – Probation: A Decision and Order or Stipulation or other final order has been entered that allows the individual to be licensed, work in one or more facilities, or to be approved as a resource family, subject to certain conditions;
- (D) AA – Filed (Pending): A Statement of Issues to deny an application for licensure, approval or certification or an Accusation to revoke a license or certificate, rescind an approval or exclude an individual has been served on the individual, but no final action on the case has been taken;
- (E) AA – Closed: The case has been closed without a revocation, rescission, denial, or exclusion action after issuance of the Statement of Issues or Accusation or after a RFA NOA has been rescinded.

NOTE: The above administrative action code descriptions may not have been updated in the databases.

If the legal documents are not on AARS, please send an email request for the documents to be retrieved from archives, stating the individual's name and Legal case number, to the CDSS Legal Division at [LAARS-CCL@dss.ca.gov](mailto:LAARS-CCL@dss.ca.gov).

### (2) AARS/NOA Document Review and Legal Effect

A Decision and Order or a Stipulation, Waiver and Order are binding legal documents. In addition, a NOA or exclusion order that was not appealed constitutes a final decision or order. The reviewing agency should discuss the documents with their consulting attorney before making a decision to determine options available to the county.

If it is determined that the individual is under a presently enforceable exclusion order preventing his/her presence in a licensed facility or approved home, the Resource Family should be immediately notified that the individual cannot be present in the home. If there is any indication or suspicion that the individual is or will be residing or regularly present in the home, it may be necessary for the reviewing agency to conduct a case management visit to verify that the individual is not present. A copy of the Decision and Order or exclusion order may be provided to the Resource Family.

### b. Licensing Information System (LIS)

Prior licensing history and criminal record exemption denial or rescission actions are contained in the Licensing Information System (LIS) maintained by the Department. Pursuant to the Written Directives, a resource family background check shall include a check for current or past licensing associations with CCL, criminal record clearances, denials or rescissions, or other Administrative Actions when assessing a family's background for RFA. Documentation of this check shall be recorded on the [RFA 02 Resource Family Background Checklist](#). Departmental oversight and review include verification of all background check components, including the Licensing and administrative action databases. Documentation of these database checks will help verify compliance during the Department's review.

The requesting reviewing agency must complete the *RFA Background Check Assessment: LIS & AARS Request Form* for each applicant and all adults residing or regularly present in the home of an applicant or Resource Family. The form, password encrypted if containing social security numbers, must include the name (required), date of birth (required), social security number (if available), agency name, and approval worker contact information for all applicants. To ensure efficiency, it is recommended that counties include multiple checks on a single form and submit on a weekly basis. Once completed, the form must be securely emailed to the LLCU at [CLLISLAARSChecks@dss.ca.gov](mailto:CLLISLAARSChecks@dss.ca.gov). Please ensure the form is completed correctly and includes all required information. The form may be obtained by accessing the "[Resource Family Approval Background Check Assessment](#)" form at:

<http://www.cdss.ca.gov/inforesources/Childrens-Residential/Resources-for-Providers/LIS-LAARS-Check-Unit>

Each reviewing agency is requested to identify and provide LLCU with the name of their single point of contact (SPOC) designated to submit LIS/AARS check requests on behalf of the agency. The LLCU will provide the results of the LIS checks to the identified designee. For LIS checks completed with no results, the LLCU will identify "none" on the form, which should be noted on the *Resource Family Background Checklist* form (RFA 02). It is the LLCU's goal to respond within fifteen (15) business days of receiving a request.

If a reviewing agency has any questions or wishes to follow up on a request, their SPOC may contact LLCU, Statewide Children's Residential Program Office, at (916) 651-7140 or by email at [CLLISLAARSChecks@dss.ca.gov](mailto:CLLISLAARSChecks@dss.ca.gov).

NOTE: If there are questions regarding the results of the LIS check, please contact the regional office for additional information.

## 105 NAME SEARCH

California Penal Code (PC) section 11105.7 allows the Department of Justice (DOJ) to conduct a non-fingerprint based name check under certain circumstances. A name search is an alternate type of criminal history inquiry that is conducted for individuals whose:

- Live scan fingerprints have been rejected twice due to poor fingerprint image quality; or
- Medical condition prevents the submission of fingerprints (e.g., no fingers, hands are atrophied to the point of being unable to submit to a fingerprint roll); or

- Physical disability prevents them from providing any fingerprint images at all (i.e., dual amputees).

### a. Name Search for Rejected Fingerprints

#### The Department of Justice Website:

Fingerprint images can be rejected by the DOJ and/or the FBI.

Fingerprints that are rejected twice by the DOJ due to poor print quality will automatically be processed by the DOJ using the applicant's name to check the criminal history database for any existing criminal history.

If an individual's fingerprints are rejected twice by the FBI due to poor print quality, the form [BCIA 8020](#), *REQUEST FOR APPLICANT NAME CHECK BY THE FEDERAL BUREAU OF INVESTIGATION (FBI)* must be submitted to the DOJ's FBI Response Unit by the reviewing agency, to request a name check of the FBI national criminal history database. The FBI name check request must be received by the DOJ within 75 calendar days of the second rejection notice or the individual will need to be reprinted. This allows the DOJ to process the request for the FBI name check and forward it to the FBI within the required 90 days. After 90 days, the FBI deletes all fingerprint background check transactions and considers the FBI background check request complete. The individual must be fingerprinted again, which re-starts the FBI fingerprint background check process.

#### Federal Bureau of Investigation:

If an individual's fingerprints are rejected twice by the Federal Bureau of Investigation, the following steps must be taken to initiate a Federal Bureau of Investigation name check.

See form [BCIA 8020](#) on the Department of Justice website at: <https://oag.ca.gov/fingerprints/forms>.

Requests must be sent to:  
Department of Justice  
Bureau of Criminal Information & Analysis (BCIA)  
FBI Response Unit  
P.O. Box 903417  
Sacramento, CA 94203-4170  
Fax: (916) 227-3820  
Email: [FBI.ResponseUnit@doj.ca.gov](mailto:FBI.ResponseUnit@doj.ca.gov)

### b. Name Search for Illegible or No Fingerprints

When an individual cannot submit fingerprints for medical reasons (e.g., no fingers, hands are atrophied to the point of being unable to submit to a fingerprint roll), the Department of Justice (DOJ) requires that prints be rejected twice before DOJ will complete a non-fingerprint based name check. The FD-258 fingerprint card should be used to request a name-based search.

The FD-258 fingerprint card must have impressions for each fingerprint box on the card. If a finger cannot be used, a knuckle smudge will suffice, but the fingerprint card must have the appropriate knuckle smudge for every corresponding finger space on the card. When a

fingerprint card is rejected due to poor quality prints, a second fingerprint card will be required. If the fingerprint card is rejected a second time, DOJ will automatically conduct a name check for the California criminal background check. For an FBI name check, complete a BCIA 8020, *Request for Applicant Name Check By the FBI* form, and submit it within 75 days from the second rejection notice.

### c. Name Search for Persons Unable to Submit Prints At All

Under normal circumstances, a person's fingerprints must be rejected twice due to poor quality before DOJ will conduct a name check. However, there are individuals, such as dual amputees, who are physically incapable of providing any images at all, legible or not. For those specific individuals, DOJ has implemented a process to conduct a name check upon receipt of verification of the person's inability to provide fingerprints.

If an individual is unable to submit any fingerprints, the reviewing agency will complete the *Agency Information* section of the [BCIA 9010 REQUEST FOR DEPARTMENT OF JUSTICE NAME CHECK](#) and provide to the person. **This form may be used only when the person cannot provide any fingerprints at all.** After completing all the requested information on the form, the individual must take the form to a law enforcement agency. The law enforcement official will verify that the individual cannot be fingerprinted and complete the *Law Enforcement Verification* section on the form. Failure to have a law enforcement official verify the individual's inability to provide fingerprint images will result in the DOJ's denial of the request.

See form [BCIA 9010](#) on the Department of Justice website at: <https://oag.ca.gov/fingerprints/forms>.

Requests must be sent to:  
California Department of Justice  
Bureau of Criminal Information and Analysis  
Applicant Program  
P.O. Box 903417  
Sacramento, CA 94203-4170  
Email: [AppAgencyquestions@doj.ca.gov](mailto:AppAgencyquestions@doj.ca.gov)

## 106 FEDERAL BUREAU OF INVESTIGATION (FBI)

Welfare and Institutions Code (W&IC) section 16519.5 requires that all individuals, subject to a criminal record review, obtain a Federal Bureau of Investigation clearance in addition to the California clearance obtained through the Department of Justice. If the Federal Bureau of Investigation rap sheet contains a conviction that occurred in a state other than California or outside of California's jurisdiction (eg., federal or military), the reviewing agency must evaluate the facts and circumstances to determine if there would have been a conviction if the crime had been committed in California. The reviewing agency must process an out-of-state conviction as it would an initial or subsequent conviction, as applicable (see section 123, *Arrests and Convictions – Subsequent to Clearance or Exemption*).

If an individual was initially cleared to reside or be regularly present in a resource family home and the reviewing agency receives subsequent information of undisclosed convictions, the individual must request an exemption as outlined in section 123, *Arrests and Convictions – Subsequent to Clearance or Exemption*.

### a. Military Offense

Military discipline may or may not require a criminal record exemption. These convictions will usually list an offense for a violation of the “UCMJ” (Uniform Code of Military Justice). To be considered a “criminal conviction for RFA purposes,” the elements of the military offense must contain all the elements required for a California crime. Offenses such as murder, robbery, and drunk driving match state offenses and will likely require an exemption, but only if the individual was provided state-level due process (e.g., a judge or jury or military tribunal, appointed counsel, the right to call and question witnesses). Discipline for certain military conduct, such as desertion or disobeying an order, is not equivalent to any California crime and should generally not be considered. If a county obtains military records indicating conduct resulting in military discipline, a legal consult should be obtained to determine whether the conduct may be considered as criminal conduct or as an aggravating factor to a conviction.

When in doubt about the offense or the level of due process afforded, consult with the county liaison and/or consulting attorney.

### b. Immigration

A CORI may have a hit including a crime related to unlawful entry into the United States, but there is no clear indication of conviction, arrest, etc. The reviewing agency would 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. The individual must request an exemption for any conviction(s) and will be evaluated for present good character and rehabilitation, regardless of immigration status.

If the CORI indicates a “deportation” or “deported to country of origin,” the individual was most likely returned to his or her country of origin. A deportation 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. The reviewing agency may choose to investigate a deportation arrest and assess for conduct. However, approval of a resource family may not be delayed by the investigation, unless the arrest was for a crime specified at Health and Safety Code section 1522(e).

## 107 CHILD ABUSE CENTRAL INDEX (CACI)

The Child Abuse Central Index is a database maintained by DOJ that contains an index of individuals with a substantiated history of child abuse or severe neglect, as defined in the Child Abuse and Neglect Reporting Act (Penal Code section 11164 et seq.). Welfare and Institutions Code section 16519.5 requires that the Child Abuse Central Index be checked pursuant to H&S Code 1522.1 prior to Resource Family Approval. Reviewing agencies must ensure that subsequent CACI notifications are in place with the DOJ. Please note that individuals with a CACI clearance conducted prior to January 1, 1999 may not have subsequent notifications in place and may need to be re-printed. Child Abuse Central Index searches are automatically completed by Department of Justice once an individual completes the live scan fingerprint check.

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The Department of Justice will conduct a search of the Child Abuse Central Index and respond with one of the following:

1. "Possible match."
2. "No match to any report on file entered as an applicant."

The Department of Justice response time for a Child Abuse Central Index check varies from three (3) days to eight (8) weeks.

In a situation where the DOJ rap sheet contains both a criminal incident and a CACI violation related to the same incident, all aspects of the results must be evaluated and investigated. Information contained in CACI may not be contained in criminal record information and vice versa. The fact that there are related incidents on both the rap sheet and in CACI does not relieve the reviewing agency from investigating both hits.

When a Child Abuse Central Index Check possible match is received by the reviewing agency, the identity of the individual must be confirmed before initiating an investigation.

The following procedures should be completed when confirming the individual's identity:

- Check all identifying information, including the spelling of the individual's name, date of birth, and social security number (if available) to determine whether the Child Abuse Central Index check and application information match.
- After using the process above to confirm the individual's identity, the reviewing agency must notify the individual, in writing, of the Child Abuse Central Index check's possible match and of the reviewing agency conducting an investigation for possible child abuse.
- **The notification may be mailed or given only to the individual in-person and must include the name of the reporting agency and date of the report.** The individual must be notified prior to the agency's final investigative findings. If the applicant questions the individual's status, they may only be told there is a delay in the process.
- Contact the reporting agency and/or involved law enforcement agency for any available reports. Reporting agency records may include arrest or incident reports, investigative reports, delivered service log entries, social worker reports to the court, probation officer reports to the court, grievance hearing records, juvenile court records or criminal court records. For juvenile court records, relevant findings and orders are often made at the jurisdictional/dispositional hearings, so efforts should be made to obtain those reports along with the minute orders. Do not wait for a response from the individual before contacting the reporting agency.

Upon receipt of the investigative report from the reporting agency, conduct an investigation to determine the appropriate course of action. An administrative action, including but not limited to application denial or an exclusion action against an associated individual, may be filed if the investigation reveals admissible evidence of conduct that poses a risk or threat to the health and safety of a child or nonminor dependent. The mere fact that an individual has a CACI hit may not be independently sufficient to pursue administrative action.

If a clearance is granted, notify the individual by letter. If there are concerns and a clearance is not recommended, consult with your assigned county liaison and consulting attorney. A legal consult is always required prior to an administrative action (i.e., issuance of a NOA).

If the person has a CACI match and was not previously afforded due process in a CACI grievance hearing, juvenile dependency or a criminal proceeding, he/she is entitled to request a grievance hearing (Gomez v. Saenz). Refer him or her to the reporting agency.

### **108 ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006**

Senate Bill 703 (Chapter 583, Statutes of 2007) requires California to implement the federal requirements specified in the Adam Walsh Child Protection and Safety Act of 2006 for prospective foster and adoptive parents. Effective January 1, 2008, there are stricter criminal history and child abuse checks prior to foster family home licensure, issuance of certificates of approval for certified family homes, and approval of relative/NREFM homes. These requirements will now also apply to Resource Family Approval.

#### **Out-of-State Child Abuse and Neglect Registry Checks**

If the applicant indicates on the *Resource Family Criminal Record Statement* ([RFA 01B](#)) that they have resided in another state within the last 5 years the applicant must complete an Out-of-State Child Abuse/Neglect Report Request ([LIC 198B](#)) on the county's letterhead. NOTE: Some states require use of their own form, notarization or witnessing of the individual's signature, or fee payment. A list of the most current registries, contacts and requirements for each state is available on the [Adam Walsh Information and Forms page](#).

Send the LIC 198B, or the state-specific form, and all requested documents to the state(s) identified with a cover page. If information is not received within fourteen (14) days, send the request again with a "Second Request" stamp. Verify the correct fax numbers, mailing addresses or contacts are being used. If the state remains unresponsive, notify the Regional Office of the U.S. Department of Health & Human Services.

Administration for Children & Families  
90 Seventh Street, 9th Floor  
San Francisco, CA 94103  
Phone: (415) 437-8462  
Fax: (415) 437-8436

On receipt of a response from the other state's registry indicating No Match, the reviewing agency should send a clearance letter. If the other state indicates that the individual may be matched on its Child Abuse/Neglect Registry, and the investigative report is not included, notify the individual by letter that further investigation is required. The written notification allows the individual to request that the investigation into his/her out-of-state child abuse/neglect registry match not continue.

If the individual returns the letter indicating that he/she does not want the investigation to continue, a notice of incomplete application shall be sent to the applicant or individual confirming that (language). This is not treated as a denial and a Notice of Action is not required. A legal consult is not required unless the reviewing agency is seeking an action for the record.

If the individual does not respond to the letter, request the investigative report from the agency that conducted the original child abuse investigation. Send a cover letter with a copy of the

other state's registry response. Follow the instructions above for unresponsive agencies. Follow the reviewing agency's procedures for processing requests for payment of fees.

Upon receipt of the investigative report from the reporting agency, conduct an investigation to determine whether or not the individual poses a risk or threat to the health and safety of a child.

If a clearance is granted, the reviewing agency should notify the individual by letter. If there are concerns and a clearance is not recommended, consult with your assigned county liaison and consulting attorney.

### 109 CRIMINAL OFFENDER RECORD INFORMATION (CORI)

A Criminal Offender Record Information (CORI) or a criminal record transcript, commonly referred to as a rap sheet, is a document provided by the Department of Justice (DOJ) or the Federal Bureau of Investigation (FBI) in response to a request for a criminal record review by the submission of fingerprints. Pursuant to W&IC Section 16519.5 and its cross reference to Family Code (FC) Section 8712, reviewing agencies will receive the individual's full criminal history. The reviewing agency is responsible for reviewing the arrest and conviction information on the rap sheet and as self-disclosed on the *Resource Family Criminal Record Statement* (RFA 01B).

The rap sheet may note multiple arrests for felonies or misdemeanors, yet not show any conviction or disposition information. The rap sheet may also contradict an individual's self-disclosure or DMV database. For example, the rap sheet may indicate that the conviction is for a felony when the charge was actually reduced to a misdemeanor pursuant to a plea agreement. In some cases, the reviewing agency will need to obtain the court conviction record, court records, DOJ arrest disposition and relevant arrest or incident reports in order to ensure the accuracy of the rap sheet.

Crime reports and court records may provide information indicating that the conduct underlying a conviction may be more serious than is indicated by the conviction. For example, misdemeanor convictions for Penal Code (PC) section 415 (also known as "Disturbs by Loud, Unreasonable Noise" or "Disturbing the Peace") and PC section 594 (Vandalism) are frequently pled down from a domestic violence charge. Therefore, it may be necessary for the reviewing agency to obtain arrest or crime reports to properly evaluate the individual's criminal history. Certified court records, certified crime reports or the individual's admission will be needed to prove the criminal conduct or conviction at an administrative hearing. The rap sheet will not be accepted as evidence at the hearing.

Based on policies and procedures approved by the Department of Justice, the reviewing agency may discuss all convictions noted on the rap sheet with the individual. It is not necessary to obtain a court conviction record prior to this discussion.

**The CORI/rap sheet itself is confidential and shall not be shared with anyone other than the subject of the rap sheet. For example, if the rap sheet pertains to a resident or person regularly present in the home, the rap sheet shall not be shared with the applicant, Resource Family, or other reviewing agency. However, the CORI may be reviewed by specific entities that have the statutory authority to do so, such as state or federal auditors. Criminal history information will be summarized in the Written Report and may be shared for purposes of approval, transfer, and placement.**

Individuals who are not eligible for a criminal record clearance must be expeditiously provided a copy of the Criminal Offender Record Information (CORI) received from the DOJ pursuant to PC 11105(t). A copy of the CORI can be provided directly to the person, or it can be included in the initial notice to the individual by either copying/pasting or attaching the information.

When a new or complete rap sheet is obtained from the Department of Justice, only the criminal history information on the most current, complete rap sheet can be considered by the reviewing agency. The reviewing agency is not authorized to check old rap sheets for additional information or compare versions to include information that has been removed by DOJ and is no longer legally available for consideration.

When subsequent arrest information is received from the Department of Justice, the rap sheet will only contain new information. The reviewing agency must reference the most current complete rap sheet as well as the subsequent arrest information to properly evaluate the individual's present character.

### 110 MARIJUANA-RELATED CONVICTIONS

The Department of Justice should screen out specific minor marijuana convictions/arrests that are over 2 years old. If this information is on the rap sheet, it shall not be considered to be relevant for any purpose. This is codified by the Marijuana Reform Act of 1977 (H&SC Sections 11361.5 and 11361.7).

Misdemeanor convictions not to be considered if the conviction occurred over 2 years ago:

- H&SC section 11357(b), possession of 28.5 grams or less
- H&SC section 11357(c), possession of over 28.5 grams
- H&SC section 11357(d), possession of 28.5 grams or less on K-12 school grounds
- H&SC section 11357(e), juvenile in possession of 28.5 grams or less
- H&SC section 11360(b), transportation of 28.5 grams or less

Felony and misdemeanor convictions not to be considered if the conviction occurred prior to 1976:

- H&SC section 11357, possession
- H&SC section 11364, drug paraphernalia
- H&SC section 11365, presence where marijuana is being unlawfully used
- H&SC section 11550, under the influence of marijuana

### 111 NON-EXEMPTIBLE CRIMES

If an individual subject to the background check requirement has been convicted of a crime that is non-exemptible and continues to reside or is regularly present in the home, the application/approval must be denied/rescinded. The reviewing agency must inform the applicant of the denial. The reviewing agency must send written notification in the form of a NOA to both the applicant/Resource Family and the individual. The NOA to the affected individual must identify the legal basis for the decision and the conviction information relied on to make the determination. This information will usually be contained in the state summary

criminal history information received from the Department of Justice but should always be verified by court records, a DOJ arrest disposition report, a California Department of Corrections and Rehabilitation (CDCR) 969B prison packet, or an admission. In addition, the letter must list the non-exemptible conviction(s), the date of the conviction, and the location (city or county) of the conviction, if known.

If a prospective associated individual has been convicted of a crime that is non-exemptible, the reviewing agency must send separate, concurrent letters to both the applicant/Resource Family and to the individual, notifying them that the individual's crime is non-exemptible and that the individual may not reside in or be regularly present in the home.

If the individual's crime does not appear on the state non-exemptible crimes list and does not meet the definition of a federal non-exemptible crime or a 5-year ban crime, the individual has the right to request an exemption (see section 119, *Exemption*).

### a. State Non-Exemptible<sup>1</sup> Crimes

Health and Safety Code (H&SC) 1522 prohibits the Department of Social Services, county licensing agencies, or approval agencies from granting a criminal record exemption for specific enumerated crimes regardless of when the conviction occurred.

An individual who has been convicted of any one of these crimes cannot request or obtain a criminal record exemption. Instead, he/she has a right to appeal the denial upon receipt of the Notice of Action (NOA).

**NOTE:** Effective 1-1-2018, the following previously non-exemptible **misdemeanor** convictions are eligible for an exemption pursuant to SB 213:

- Penal Code 314 – Lewd or obscene exposure of private parts [incorporated via Penal Code 290(c)]
- Penal Code 368 – Elder or dependent adult abuse

#### (1) Penal Code section 37 – Treason

- Specified at Penal Code Section 667.5(c)(7)

#### (2) Penal Code section 128 – Perjury resulting in the execution of an innocent person

- Specified at Penal Code Section 667.5(c)(7)

#### (3) Penal Code Section 136.1 constituting a felony violation of Section 186.22 — Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22

- Added at Penal Code § 667.5(c)(20) by Proposition 21 effective 3-8-2000
- Must be a felony conviction for threats to victims or witnesses, as defined in PC 136.1, which would constitute a felony conviction for Penal Code Section 186.22(a): meaning the threats were gang related. Review of court records may be necessary.

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<sup>1</sup> Juveniles and young adults sentenced to California Youth Authority may be released from such disabilities under W&IC Section 1179 and/or 1772. Reviewing agencies are advised to consult the Legal Division if this issue arises.

- (4) **Penal Code Sections 187, 190-190.4 and 192(a), etc. — Any murder/attempted murder/voluntary manslaughter**
- Specified at Penal Code § 667.5(c)(1) and (c)(12)
  - This is not an exhaustive list of code sections under which Murder, Attempted Murder, or Voluntary Manslaughter could be charged.
  - Approval agencies are advised to consult legal if conviction is for a similarly titled state crime committed outside of California or a federal crime.
- (5) **Penal Code Section 203, 205, etc. — Any mayhem**
- Specified at Penal Code § 667.5(c)(2)
  - This is not an exhaustive list of code sections under which this crime can be charged.
  - Approval agencies are advised to consult legal if conviction is from out of state for a similarly titled crime.
  - Exemption may be granted for licensure or employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii).
- (6) **Penal Code Section 206 —Torture**
- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
  - Must be a felony conviction
- (7) **Penal Code Sections 207, 208, 209, 209.5 — Kidnapping**
- Specified in its entirety without qualification at Penal Code § 667.5(c)(14) as a result of Proposition 21, effective 3-8-2000
  - A conviction for the attempt to commit 207 or 209 with intent to violate Penal Code § 261, 286, 288, 288a, or 289 is non-exemptible<sup>2</sup>
- (8) **Penal Code Sections 211, 212, 212.5, 213, 214 — Any robbery**
- Specified at Penal Code § 667.5(c)(9)
- (9) **Penal Code Section 215 — Carjacking**
- Section in its entirety without need for deadly weapon charge added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
  - Specified in Penal Code § 667.5(c)(17) by Proposition 21 which also removes the need for weapon charge effective 3-8-2000
- (10) **Penal Code section 218 or 219 – Train wrecking**
- Specified in Penal Code section 667.5(c)(7)

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<sup>2</sup> A conviction for the attempt to commit any crime specified at Penal Code § 290(c) is non-exemptible.

**(11) Penal Code Section 220 — Assault with intent to commit mayhem, rape, sodomy or oral copulation, etc.**

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871, Penal Code § 290(c) and added in Penal Code § 667.5(c)(15) pursuant to Proposition 21, effective 3-8-2000
- A conviction for the attempt to commit this crime is non-exemptible except for attempted Assault with intent to commit Mayhem which is excluded in Penal Code § 290(c)

**(12) Penal Code Section 236.1(b) or 236.1(c) – Human trafficking of adults or minors**

- Specified in Penal Code section 290(c)
- Where the victim is a minor, a conviction for the attempt to commit this crime also is non-exemptible

**(13) Penal Code Section 243.4 — Sexual battery**

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871, and Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(14) Penal Code Section 261 — Rape**

- Specified in Penal Code § 290(c)
- A conviction for the attempt of this crime is non-exemptible

**(15) Penal Code Section 262(a)(1) or (4) — Rape of spouse**

- Specified in Penal Code § 667.5(c)(3)
- Penal Code § 262(a)(1) is specified in Penal Code § 290(c), which requires use of violence or force for which person was sentenced to state prison
- A conviction for the attempt to commit a violation of Penal Code § 262(a)(1) is non-exemptible. Approval agencies are advised to consult with Legal.

**(16) Penal Code Section 264.1 — Rape in concert**

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871, and in Penal Code Sections 290(c) and 667.5(c)(18) by Proposition 21 effective 3-8-2000
- A conviction for the attempt to commit this crime is non-exemptible

**(17) Penal Code Section 266 — Enticing minor into prostitution**

- Specified in Penal Code § 290(c) including all Penal Code § 266 sections below. Therefore, a conviction for the attempt to commit any of the Penal Code § 266 violations listed below is non-exemptible.

**(18) Penal Code Section 266c — Induce to sexual intercourse, etc. by fear or consent through fraud**

**(19) Penal Code Section 266h(b) — Pimping a minor**

- (20) **Penal Code Section 266i(b) — Pandering a minor**
- (21) **Penal Code Section 266j — Providing a minor under 16 for lewd or lascivious act**
- (22) **Penal Code Section 267 — Abduction for prostitution**
- Specified in Penal Code § 290(c)
  - A conviction for the attempt to commit this crime is non-exemptible
- (23) **Penal Code Section 269 — Aggravated assault of a child**
- Specified in Penal Code § 290(c)
  - A conviction for the attempt to commit this crime is non-exemptible
- (24) **Penal Code Section 272 — Contributing to delinquency of a minor**
- Specified in Penal Code § 290(c)
  - Must involve lewd or lascivious conduct
  - A conviction for the attempt to commit this crime is non-exemptible
- (25) **Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] — Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death**
- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
  - Conviction of Penal Code § 273a before 1-1-1965 is exemptible
- (26) **Penal Code Section 273ab – Assault of a child 8 years or younger**
- Specified in its entirety. Conviction for using force likely to produce great bodily injury and that resulted in the child’s death, in the child becoming comatose, or in the child suffering permanent paralysis.
- (27) **Penal Code Section 273d — Willfully inflicting any cruel or inhuman corporal punishment or injury on a child**
- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871
  - “Spousal abuse” deleted by 1977 amendment
  - If conviction was prior to 1978 then it must be for child abuse and not spousal abuse
- (28) **Penal Code Section 285 — Incest**
- Specified in Penal Code § 290(c)
  - A conviction for the attempt of this crime is non-exemptible
- (29) **Penal Code Section 286 — Sodomy**
- Specified in Penal Code § 290(c) and “By force” in Penal Code § 667.5(c)(4)
  - NOTE: Need not be “By force” to be non-exemptible per Penal Code § 290(a)(2)(A)
  - A conviction for the attempt of this crime is non-exemptible

- Rewritten by 1975 amendment, which removed the far-reaching “infamous crime against nature” language. Prior to amendment the section could be read to prohibit the act between consenting adults. Penal Code § 290(a)(2)(A)(F)(i) sets forth procedure by which a subject can establish such acts were decriminalized by 1975 or 1976 legislation. Reviewing agencies are advised to consult with Legal if conviction is on or before 1-1-1976.

**(30) Penal Code Section 288 — Lewd or lascivious act upon a child under 14**

- Specified in Penal Code § 290(c), Penal Code § 667.5(c)(6), and Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871
- A conviction for the attempt to commit this crime is non-exemptible

**(31) Penal Code Section 288a — Oral copulation**

- Specified at Penal Code § 290(c) and “By Force” at Penal Code § 667.5(c)(5)
- NOTE: Need not be “By force” to be non-exemptible per Penal Code § 290(c)
- Rewritten by 1975 amendment, which removed far-reaching language. Prior to this amendment the section could be read to prohibit the act between consenting adults. Penal Code § 290(a)(2)(A)(F)(i) sets forth procedure by which a subject can establish such acts were decriminalized by 1975 or 1976 legislation. Approval agencies are advised to consult with Legal if the conviction is on or before 1-1-1976.

**(32) Penal Code Section 288.2 — Distributing lewd material to children**

- Specified in Penal Code § 290(c) by amendment effective 1-1-1990
- Must be a felony conviction
- A conviction for the attempt to commit this crime is non-exemptible
- Consult with Legal if conviction before 1-1-1990

**(33) Penal Code section 288.3 – Contact with minor to commit sexual offense**

- Specified in Penal Code § 290(c) by amendment effective 9-20-2006
- A conviction for the attempt to commit this crime is non-exemptible

**(34) Penal Code section 288.4 – Meeting with a minor for sexual purpose**

- Specified in Penal Code § 290(c) by initiative effective 11-7-2006
- A conviction for the attempt to commit this crime is non-exemptible

**(35) Penal Code Section 288.5 — Continuous sexual abuse of a child**

- Specified in Penal Code § 290(c) by amendment effective 1-1-1990 and at Penal Code § 667.5(c)(16) by amendment effective 1-1-1992
- A conviction for the attempt to commit this crime is non-exemptible

**(36) Penal Code Section 288.7 — Sexual conduct with a child 10 years or younger**

- Specified in Penal Code, § 290(c) by amendment effective 9-20-2006
- A conviction for the attempt to commit this crime is non-exemptible

**(37) Penal Code Section 289 — Genital or anal penetration by foreign object**

- Penal Code § 289 is specified in Penal Code § 290(c) and Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.971
- A conviction for the attempt to commit this crime is non-exemptible
- 1993-94 amendment repealed former Penal Code § 289.5 – relating to punishment for rape or sodomy whether penetration by foreign object or penis – and included it in Penal Code § 289. Approval agencies are advised to consult with Legal if conviction is for Penal Code § 289.5.

**(38) Offenses listed in Penal Code Section 290(c) — Registration of sex offenders (all such offenses are included in this list)**

- Note that SB 213, effective 1-1-2018, removed misdemeanor convictions for Penal Code § 314 from the list of non-exemptible crimes in Section 290(c). Only felony convictions for Penal Code § 314 are non-exemptible.
- Specified at Health & Safety Code Sections 1522, 1568.09, 1569.17, 1596.871
- If person is noted on the rap sheet as required to register as a sex offender and the conviction for which registration is required is not listed on the rap sheet, then contact the DOJ Sex Registration Unit ASAP to get crime. It is the crime listed at 290(c) which is non-exemptible, not the requirement to register. Nevertheless, approval agencies are advised to consult with Legal if the underlying crime is exemptible (not listed at 290(c)) but the subject was ordered by court to register as a sex offender anyway (See Penal Code § 290.006).
- Penal Code Sections 288.2 and 288.5 added to list of offenses requiring registration by amendment effective 1-1-1990

**(39) Penal Code Section 311.1 — Sent or brought into state for possession or distribution: child-related pornography**

- Added by amendment to Penal Code § 290(c), effective 1-1-2004
- A conviction for the attempt to commit this crime is non-exemptible

**(40) Penal Code Section 311.2(b), (c) or (d) — Sending or bringing into state, possessing for distribution: child-related pornography**

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(41) Penal Code Section 311.3 — Sexual exploitation of a child**

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(42) Penal Code Section 311.4 — Using a minor to assist in making or distributing child pornography**

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(43) Penal Code Section 311.10 — Advertising or distributing child pornography**

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(44) Penal Code Section 311.11 — Possessing child pornography**

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(45) Penal Code Section 314(1) or (2) — Lewd or obscene exposure of private parts**

- SB 213, effective 1-1-2018, removed misdemeanor convictions for Penal Code § 314 from the non-exemptible crimes list. Only felony convictions for this crime are non-exemptible, regardless of when the conviction occurred.
- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(46) Penal Code Section 347(a) — Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, or reservoir**

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
- Must be a felony conviction

**(47) Penal Code Section 368 — Elder or dependent adult abuse**

- SB 213, effective 1-1-2018, removed misdemeanor convictions for Penal Code § 368 from the non-exemptible crimes list. Only felony convictions for this crime are non-exemptible, regardless of when the conviction occurred.
- SB 1992, effective 1-1-2001, specifies Penal Code § 368 in its entirety.
- Formerly Penal Code § 368(a) or (b) if prior to 1-1-1999, and (b) or (c) thereafter as specified at Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871

**(48) Penal Code Section 417(b) — Drawing, exhibiting, or using firearm or deadly weapon on the grounds of a day care center**

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1569.17 and 1596.871
- Must be a felony conviction

**(49) Penal Code Section 451(a) — Arson with great bodily injury**

- A felony violation of Penal Code § 451(a) specified at Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
- Also specified at Penal Code § 667.5(c)(10)

**(50) Penal Code Section 451(b) — Arson of inhabited structure or property**

- A felony violation of Penal Code § 451(b) specified ONLY at Health & Safety Code Section 1596.871(f)(1)(B)
- Applies only to facilities covered under Health & Safety Code Section 1596.871 (Family Child Care Homes, Child Care Centers, and TrustLine)

**(51) Penal Code Sections 518 with 186.22 — Extortion/gang related**

- Added by Proposition 21, effective 3-8-2000, at Penal Code § 667.5(19)
- Must be a felony conviction for extortion, as defined in Penal Code Section 518, with a sentencing enhancement under Penal Code Section 186.22(b) (gang related) or a felony conviction for Penal Code Section 186.22(a) (gang related). Review of court records may be necessary to determine enhancement (gang-related conduct)

**(52) Penal Code Section 647.6 [or prior to 1987 former section 647a] — Annoy, molest child under 18**

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

**(53) Penal Code Section 653f(c) — Solicit another to commit rape, sodomy etc.**

- Specified in Penal Code § 290(c)
- Reviewing agencies are advised to consult with Legal if conviction under 653f(c) is prior to 1-1-1980
- A conviction for the attempt to commit this crime is non-exemptible

**(54) Penal Code Section 664/187 — Any attempted murder**

- Specified in Penal Code § 667.5(c)(12)
- Reviewing agencies are advised to consult with Legal if conviction is from out of state for similar crime.

**(55) Penal Code Section 667.5(c)(7)<sup>3</sup> — Any felony punishable by death or imprisonment in the state prison for life without possibility of parole but not for an indeterminate sentence**

- An example of an indeterminate sentence is “5 years to life” or “life in prison with possibility of parole”

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<sup>3</sup> If any Penal Code § 667.5(c) entry appears on rap sheet alone without any other Penal Code section violation, then reviewing agencies are advised to consult with Legal.

**(56) Penal Code Section 667.5(c)(8) — Enhancement for any felony which inflicts great bodily injury**

- On or after 7-1-1977, felony must have been charged and proved as provided for in Penal Code §12022.7 or §12022.9. Prior to 7-1-1977, as specified in Penal Code §§ 213, 264, and 461 or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Penal Code § 12022.5 or § 12022.55

**(57) Penal Code Sections 18745, 18750, or 18755 [or 12308, 12309, or 12310 if the conviction was prior to January 1, 2012] — Exploding or igniting or attempting to explode or ignite any destructive device or explosive with the intent to commit murder**

- These sections are specified in Penal Code § 667.5(c)(13)
- These code sections were renumbered as a result of legislation initiated in 2010 by the California Law Revision Commission, Senate Bill 1080. The new code sections took effect 1-1-2012

**(58) Penal Code Section 12022.53 — Enhanced sentence for listed felonies where use of firearm**

- Specified in Penal Code § 667.5(c)(22) by Proposition 21, effective 3-8-2000
- Underlying conviction must be for a felony listed in Penal Code §12022.53
- Some subsections of Penal Code § 261 and § 262 are exemptible

**(59) Penal Code Section 11418(b)(1) or (b)(2) — Weapons of mass destruction**

- Must be felony conviction

**(60) Business & Professions Code Section 729 — Sexual exploitation by physicians, surgeons, psychotherapists, or alcohol and drug abuse counselors**

- Must be felony conviction
- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871

**b. Federal Non-Exemptible Crimes**

The federal Adam Walsh Child Protection and Safety Act of 2006 (Assembly Bill 595, Chapter 246, Statutes of 2009) allowed California to amend state law and implement the federal requirements. These crimes are in addition to the state non-exemptible crimes. Under federal law, an individual is ineligible to request a criminal record exemption for any felony conviction for child abuse or neglect, spousal abuse, crimes against a child (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery.

H&SC section 1522(g)(2)(A)(iii) states:

“Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant or any other person specified in [H&SC

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section 1522] subdivision (b) in those homes, has a felony conviction for either of the following offenses:

- (I) A felony conviction for **child abuse or neglect, spousal abuse, crimes against a child (including child pornography)**, or for a **crime involving violence**, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subparagraph, a crime involving violence means any violent crime specified in clause (i) of subparagraph (A) or subparagraph (B).” (emphasis added)

The reference to “crimes involving violence” means those violent crimes on the state’s non-exemptible crimes list.

### **Felony convictions for “child abuse or neglect”:**

There are no additional crimes for this category as the state’s existing non-exemptible crimes list covers these crimes.

### **Felony convictions for “spousal abuse<sup>4</sup>”:**

This list represents crimes *likely* to be non-exemptible under the Adam Walsh Act. The Adam Walsh Act does not enumerate all California crimes that should be considered non-exemptible. This list is not exhaustive. The reviewing agency shall use the criteria stated above to make a final determination as to whether or not a conviction is non-exemptible pursuant to the Adam Walsh Act.

Penal Code	
(PC) section 166(c)(4)	(Violation of domestic violence protective order by violence or threat of violence) *If against a spouse
PC section 262(a)(2)	(Rape of spouse-by intoxication)
PC section 262(a)(3)	(Rape of spouse-victim unconscious)
PC section 262(a)(5)	(Rape of spouse-threat to use authority)
PC section 266g	(Placing wife in house of prostitution against her will)
PC section 273.4	(Female genital mutilation) *If against a spouse
PC section 273.5	(Willful infliction of corporal injury) *If against spouse
PC section 646.9	(Stalking) *If against spouse

### **Felony convictions for “crimes against a child (including child pornography)”:**

This list provides guidance as to which crimes are *likely* to be federal non-exemptible crimes. This list is not exhaustive. The reviewing agency shall use the criteria stated above to make a final determination as to whether or not a conviction is non-exemptible pursuant to the Adam Walsh Act.

PC section 157	(Substitute one child for another to deceive)
PC section 270	(Failure to provide after final adjudication)
PC section 271	(Desert/abandon child under 14)
PC section 271a	(Abandonment of child...false misrep as orphan)

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<sup>4</sup> For purposes of this subsection, “spousal abuse,” as referenced in Health and Safety Code section 1522(g)(2)(A)(iii)(I), means the abuse of an individual to whom the perpetrator is legally married or registered as a domestic partner.

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PC section 272	(Contributing to the delinquency of a minor)
PC section 273ab	(Assault resulting in death of child under 8)
PC section 278	(Child stealing/Unlawfully detain child from legal custodian)
PC section 278.5	(Deprivation of custody or visitation)
PC section 278.5(a)	(Maliciously deprive custody of child)
PC section 280	(Removal of child from county of adoption)
PC section 280(b)	(Conceal child from adoption proceedings)
PC section 313.1(a) and (b)	(Harmful/patently offensive matter to children)
PC section 626.9	(Possess or discharge firearm in or within 1000 feet of a gun free K-12 school zone)
PC section 626.95	(Firearm at playground or youth center)
PC section 626.10(a)	(Possessing weapon at K-12 school)
PC section 646.9	(Stalking vs. child)
PC section 653j	(Solicit child to commit serious specified felony)
PC section 12072(a)(3)(A)	(Sell firearm to a minor)
PC section 12303.2	(Reckless possession of destructive device or explosive in public area near theatre, school etc...)
Business & Profession	
(BP) section 4336(a)	(Dangerous drug by minor as agent)
Health & Safety	
(HS) section 11353	(Induce, use or employ minor to violate drug provision)
HS section 11353.5	(Controlled substance given or sold to minor)
HS section 11353.7	(Controlled substance given or sold to minor in park)
HS section 11354(a)	(Minor induce, use or employ minor to violate drug provision)
HS section 11361(a)	(Sell Marijuana to minor)
HS section 11361(b)	(Furnish Marijuana to minor)
HS section 11371	(Induce minor to prescription violation)
HS section 11371.1	(Induce minor to violated provision of drug education by use or possession of controlled substance)
HS section 11379.7	(Manufacturing meth, etc. where child present)
HS section 11380	(Minor induce, use or employ minor to violate drug provision)
Welfare & Institutions Code	
(W&IC) section 1001.5	(Alcohol at Youth Authority)

### **Felony conviction for “crimes involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery”:**

There are no additional crimes for this category as the state’s existing non-exemptible crimes list covers these crimes. An exemption may not be granted for any crime on the state’s non-exemptible crimes list.

#### **c. Federal 5-Year Ban Crimes**

Under federal law, statute further prohibits the Department of Social Services from granting a criminal record exemption for any felony conviction that occurred within the last five years, for physical assault, battery, or drug or alcohol-related offenses. The law includes crimes for which an exemption may not be granted if the conviction occurred within the last 5 years. These crimes are in addition to the state’s existing non-exemptible crimes and the federal non-exemptible crimes.

H&SC section 1522(g)(2)(A)(iii) states:

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“Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant or any other person specified in subdivision [H&SC section 1522] (b) in those homes, has a felony conviction for either of the following offenses:

- (I) [continued]
- (II) A felony conviction, within the last five years, for **physical assault, battery, or drug or alcohol-related offense.**” (emphasis added)

If an applicant or any prospective associated individual has been convicted of any one of these crimes within the last 5 years, he/she is not eligible to request a criminal record exemption. The approval must be denied or rescinded if the individual continues to reside or be regularly present in the home.

### **Felony conviction, within the last 5 years, for “physical assault or battery”:**

This list represents crimes *likely* to be non-exemptible under the Adam Walsh Act. The Adam Walsh Act does not enumerate all California crimes that should be considered non-exemptible. This list is not exhaustive. The reviewing agency shall use the criteria stated above to make a final determination as to whether or not a conviction is non-exemptible pursuant to the Adam Walsh Act.

Penal Code (PC) section 69	(Obstruct / resist an executive officer by force or violence or threat)
PC section 136.1(c)(1)	(Intimidate witness by force, or threat of force or violence)
PC section 137(b)	(Influence testimony by force or threat of force)
PC section 139(a)	(Threat of force upon witness)
PC section 140(a)	(Use of or threat of force upon witness)
PC section 148.10(a)	(Resist officer resulting in death of officer)
PC section 149	(Unlawful assault / beating by public officer)
PC section 186.26(c)	(Recruiting criminal street gang member by use of physical violence)
PC section 192(c)(3)	(Vehicular manslaughter – accident knowingly caused for financial gain resulting in death)
PC section 210.5	(Hostage – using person as a shield)
PC section 217.1(a)	(Assault public official)
PC section 218	(Attempted train wrecking)
PC section 219.1	(Throwing missile at common carrier vehicle)
PC section 219.2	(Throwing hard substance at train)
PC section 236/237	(False imprisonment by force or violence)
PC section 236.1	(Human trafficking by force or violence)
PC section 241.1	(Assault against custodial officer)
PC section 241.4	(Assault against school peace officer)
PC section 241.7	(Assault against juror)
PC section 242	(Battery)
PC section 243(c)(1)	(Battery against custodial officer...)
PC section 243(c)(2)	(Battery against peace officer)
PC section 243(d)	(Battery causing serious bodily injury)
PC section 243.1	(Battery against a custodial officer)
PC section 243.3	(Battery against transportation worker or passenger)
PC section 243.6	(Battery against school employee with injuries)

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PC section 243.7	(Battery against juror)
PC section 243.9	(Aggravated battery - gassing)
PC section 244	(Assault w/ caustic chemicals)
PC section 244.5	(Assault w/ stun gun or taser)
PC section 245(a)(1)	(Assault w/ deadly weapon)
PC section 245(a)(2)	(ADW – firearm)
PC section 245(a)(3)	(ADW – machine gun)
PC section 245(b)	(ADW – semiautomatic firearm)
PC section 245(c)	(ADW – upon peace officer or firefighter)
PC section 245(d)(1)	(ADW – firearm upon peace officer or firefighter)
PC section 245(d)(2)	(ADW – semiautomatic firearm upon officer)
PC section 245(d)(3)	(ADW – machine gun upon officer...)
PC section 245.2	(ADW – driver of cab, bus...)
PC section 245.3	(ADW – custodial officer...)
PC section 245.5	(ADW – school employee)
PC section 245.6(d)	(Hazing resulting in death or SBI)
PC section 246	(Shooting into inhabited or occupied dwelling, auto, aircraft, etc)
PC section 247.5	(Discharge of laser at occupied aircraft)
PC section 261(a)(5)	(Rape – victim submits under induced belief that perpetrator is spouse)
PC section 261(a)(7)	(Rape – by threat to use official authority)
PC section 261.5	(Unlawful sexual intercourse with a minor – felony violation if victim is 3+ years younger or Perpetrator is 21+ and victim is under 16)
PC section 265	(Abduction for marriage by force)
PC section 266a	(Abduction person against will for prostitution)
PC section 266b	(Abduction person against will for illicit relation)
PC section 266i(a)	(Pandering by threat or violence)
PC section 273.4	(Female genital mutilation)
PC section 273.5	(Willful infliction of corporal injury) * Other than spouse
PC section 375(d)	(Unlawful use gas, acid or explosive upon public group)
PC section 405a	(Lynching)
PC section 417(c)	(Drawing or exhibiting firearm in threatening manner to Peace Officer)
PC section 417.3	(Drawing or exhibiting firearm in threatening manner to Vehicle Occupant)
PC section 417.6(a)	(SBI results during 417 or 417.8)
PC section 417.8	(Drawing or exhibiting firearm with intent to resist arrest)
PC section 520	(Extortion by force or threat of force)
PC section 587.1(b)	(Maliciously moving train creating a substantial likelihood of SBI or death to another)
PC section 653f(a)	(Solicitation of carjacking, robbery...)
PC section 653f(b)	(Solicitation of murder)
PC section 836.6	(Escape police) *If by force
PC section 4011.7	(Escape hospital) *If by force
PC section 4131.5	(Battery in jail)
PC section 4501	(ADW by prisoner)
PC section 4501.1	(Aggravated battery by prisoner – gassing)
PC section 4501.5	(Battery by prisoner)
PC section 4503	(Hostage by prisoner) *If by force
PC section 4530(a)	(Escape prison by force)

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PC section 4532(a)(2)	(Escape jail/prison by force)
PC section 11413	(Terrorism by use of destructive device)
PC section 11418.1	(False WMD that causes fear)
PC section 11418.5	(Threat to use WMD)
PC section 11419	(Possession of restricted biological agents)
PC section 12303	(Possession of destructive device)
PC section 12303.1	(Explosive device on vehicle, vessel, aircraft, etc.)
PC section 12308	(Exploding destructive device w/ intent to murder)
PC section 12309	(Exploding destructive device causing injury)
PC section 12310(a)	(Exploding destructive device causing death)
PC section 12310(b)	(Exploding destructive device causing mayhem)
PC section 12355(a)	(Placing boobytrap)
Vehicle Code	
(VC) section 2800.3	(Death/SBI caused by flight from officer)
VC section 23110(b)	(Throw substance on highway with GBI intent)
VC section 38318(b)	(Throw substance at OHV with GBI intent)
Welfare & Institutions Code	
(WIC) section 871(b)	(Minor escape custody) *If by force
WIC section 1768.7	(Minor escape custody) *If by force
WIC section 1768.8	(Assault/battery on person in CYA)
WIC section 1768.85	(Battery by gassing on person in CYA)

### **Felony conviction, within the last 5 years, for “drug and alcohol-related offense”:**

This list provides guidance as to which crimes are *likely* to be federal 5-year ban crimes. This list is not exhaustive. The reviewing agency shall use the criteria stated above to make a final determination as to whether or not a conviction is non-exemptible pursuant to the Adam Walsh Act.

#### Business & Professions Code

(BP) section 4060	(Cont. sub. without a prescription)
BP section 4324	(Forgery of prescription)
BP section 25603	(Bring liquor into prison)

#### Harbors & Navigation Code

(HN) section 655(f)	(Watercraft under the influence causing injury)
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#### Health & Safety Code

(HS) section 11104(a)	(Furnish cont. sub. for manufacturing)
HS section 11106(j)	(Sell cont. sub. without permit)
HS section 11152	(Nonconforming prescription)
HS section 11153(a)	(Cont. sub. prescription for unlawful purpose)
HS section 11154	(Unlawful prescription)
HS section 11155	(Illegal cont. sub. prescription)
HS section 11156	(Give cont. sub. to addict)
HS section 11157	(False prescription)
HS section 11162.5(a)	(Counterfeit prescription)
HS section 11166	(Fill old, forged or altered prescription)
HS section 11173	(Obtain cont. sub. by fraud)
HS section 11174	(False name to obtain cont. sub.)
HS section 11350	(Possession of cont. sub.)
HS section 11351	(Possession cont. sub. for sale)
HS section 11351.5	(Possession of cocaine base for sale)

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HS section 11352	(Sell or transport of cont. sub. into state or country)
HS section 11355	(Sale of substance falsely represented to be cont. sub.)
HS section 11357(a)	(Possession of concentrated cannabis)
HS section 11358	(Planting, cultivating, harvesting Marijuana)
HS section 11359	(Possession of Marijuana for sale)
HS section 11360(a)	(Transport over 28.5 grams of Marijuana into state)
HS section 11363	(Cultivation of Peyote)
HS section 11364.7(b)	(Manufacturing or furnishing drug paraphernalia)
HS section 11366	(Maintaining a place for sale of cont. sub.)
HS section 11366.5	(Provide a place for manufacture or sale of cont. sub.)
HS section 11366.6	(Using space designed to suppress police entry)
HS section 11366.7(b)	(Sale of chemical, drug or device to make cont. sub.)
HS section 11366.8	(False compartment to conceal cont. sub.)
HS section 11368	(Forging a drug prescription)
HS section 11370.1	(Possess of cont. sub. while armed with a firearm)
HS section 11370.6(a)	(Possession of over \$100,000 from sale of cont. sub.)
HS section 11370.9	(Possession of over \$25,000 from sale of cont. sub.)
HS section 11374.5	(Manufacture of cont. sub., disposal of hazardous by-products)
HS section 11375(b)	(Possession for sale of cont. sub.)
HS section 11377(a)	(Unauthorized possession of cont. sub.)
HS section 11378	(Possession for Sale)
HS section 11378.5	(Possession for sale, including Phencyclidine...)
HS section 11379(b)	(Transport cont. sub. into state or country for sale)
HS section 11379.2	(Possession for sale of Ketamine)
HS section 11379.5	(Transportation for sale, Phencyclidine: PCP)
HS section 11379.6	(Manufacturing cont. sub.)
HS section 11382	(Sale of falsely represented substances)
HS section 11383	(Possession of... w/intent to manufacture PCP)
HS section 11383.5	(Possession of... w/intent to manufacture Meth)
HS section 11383.6	(Possession of chemicals to make PCP w/intent to sell to manufacturer)
HS section 11383.7	(Possession of chemicals to make meth w/intent to sell to manufacturer)
HS section 11390	(Cultivation of mushrooms)
HS section 11391	(Transport of mushrooms into state)
HS section 11550(e)	(Under the influence of Cocaine, Heroin, Meth or PCP with loaded firearm)
PC section 191.5(a)	(Gross vehicular manslaughter: intoxicated)
PC section 222	(Administering drugs to assist in commission of crime)
PC section 382.5	(Dinitrophenol for human consumption – banned diet drug)
PC section 2772	(Interfere with prison work) * If by cont. sub. or alcohol
PC section 2790	(Interfere with prison work) * If by cont. sub. or alcohol
PC section 4573	(Bring cont. sub to jail)
PC section 4573.5	(Bring alcohol or drugs to prison)
PC section 4573.6	(Possession of cont. sub. in jail or prison)
PC section 4573.8	(Possession of cont. sub. in jail or prison)
PC section 4573.9	(Sell cont. sub. in jail or prison)
VC section 23153	(DUI w bodily injury)
VC section 23175	(DUI with prior specified convictions)
VC section 23175.5	(DUI within 10 yrs of prior felony DUI)

VC section 23550(a)	(DUI with prior specified convictions)
VC section 23550.5(a)	(DUI within 10 years of prior felony DUI)
VC section 23550.5(b)	(DUI with prior vehicular manslaughter)
W&IC section 1001.5	(Alcohol at Youth Authority)

### 112 CERTIFICATE OF REHABILITATION

Unlike state licensed facilities, Resource Families, applicants, and associated individuals who have been convicted of a non-exemptible crime covered in H&SC 1522 are not eligible to request an exemption when they have obtained a Certificate of Rehabilitation.

### 113 ARREST-ONLY, INITIAL AND SUBSEQUENT

Criminal Offender Record Information (CORI) may contain only arrest information or arrest information in addition to conviction information.

If an initial applicant is currently awaiting trial for a criminal offense, the reviewing agency may cease processing the application. This means that the review is put on “hold” while the criminal case is pending. This “cease” should not be considered a denial that triggers due process procedures unless the county obtained independent evidence to support a denial and will be issuing a NOA.

**If an individual’s criminal record indicates an arrest for a crime listed in Health and Safety Code (H&SC) section 1522(e), a county shall not grant the individual a clearance until an investigation of the arrest, including a review of any crime reports, has been completed. However, a record of arrest cannot be used to deny or rescind approval unless the reviewing agency has investigated the arrest and secured evidence that the conduct by the person may pose a risk to the health and safety of a child.**

H&SC 1522(e)(2) states:

*The department shall not issue a criminal record clearance to a person who has been arrested for any crime specified in Section 290 of the Penal Code, or for violating Section 245, 273ab, or 273.5, or subdivision (b) of Section 273a, of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department is prohibited from granting a criminal record exemption pursuant to subdivision (g), prior to the completion of an investigation pursuant to paragraph (1).*

In addition to serious arrests listed at H&SC 1522(e), the reviewing agency should investigate any and all arrest information that may lead to evidence indicating a risk to the health and safety of a child. The reviewing agency should obtain and review any available arrest reports and attempt to interview any relevant witnesses. The only exception to this requirement would be if the individual obtained a finding of factual innocence, that information shall not be investigated (see section 114, *Finding of Factual Innocence*).

Check with the court in the county where the arrest occurred to determine if the arrest is active. If the individual is awaiting trial (active arrest or warrant) the reviewing agency may cease

processing an initial application. A letter must be sent indicating that the clearance cannot be processed until the criminal case concludes.

**For subsequent arrest information, the reviewing agency is mandated to investigate the arrest conduct to ensure the continued health, safety and welfare of children. This mandate is independent of any law enforcement duty to investigate or criminally prosecute the conduct. Failure to criminally prosecute does not preclude the reviewing agency from continuing its investigation and taking administrative action, if appropriate.**

Ensure the following conditions are met:

- The arrest has not subsequently turned into a conviction (see section 119, *Exemptions*).
- The individual has not had an administrative action that would prevent the issuance of a clearance (see section 125, *Administrative Actions*).
- The rap sheet does not indicate that the individual has an outstanding warrant or pending criminal trial (see section 116, *Warrants*).

The reviewing agency will also receive subsequent criminal arrest information (rap back). The report will specify the violation, but usually will not indicate the disposition. The reviewing agency should investigate any and all arrest information that may lead to evidence indicating a risk to the health and safety of children.

During the arrest investigation the reviewing agency may only recommend excluding a person from the home after obtaining evidence that he/she may pose a risk to the health and safety of a child.

### **Procedures for Arrests Requiring Investigation**

If an investigation is warranted, admissible evidence must be obtained. It is recommended that the reviewing agency take the following steps:

- Request and review information contained in the individual's records.
- Obtain a copy of the arrest report and evaluate the individual's role in the crime. Individuals frequently make statements to the police that are documented in the arrest reports that may be considered an "admission" under the Evidence Code. In addition, officer observations such as observations of the scene, the subject's conduct, or injuries to the victim, may be admissible as direct evidence if the report is certified. Such statements should be provided to the consulting attorney for review during a legal consult.
- Contact and interview witnesses.
- Interview the individual for additional information, and ask the individual if they have any documentation related to the arrest.
- Document in detail all actions and witness interviews.
- Ensure the privacy of the investigation and individual.

### **Procedures After Investigation Has Been Completed**

- Prepare a final report documenting all actions and findings.
- Document the results of your investigation.

When issuing a finding related to an arrest that did not result in a conviction, the finding should describe the conduct underlying the arrest and not the fact that the individual was arrested. For example, a finding regarding an arrest-only for domestic violence may read, "On or about June 1, 2016, John Smith engaged in a physical altercation with [victim – confidential] during which he choked and punched [victim – confidential], resulting in visible injuries to her face and neck." This principle applies to the allegations in a NOA or Position Statement as well. If it appears that a potential administrative action may be needed, contact the County Liaison and consulting attorney. Refer to section 126, *Administrative Actions* for more information.

### 114 FINDING OF FACTUAL INNOCENCE

For innocent people who are arrested, California has a process by which an individual can get his/her arrest records sealed for 3 years and destroyed thereafter. Individuals can petition to clear their arrest records up to two (2) years after the date of arrest or the filing of the accusatory pleading, whichever is later. A finding of factual innocence can be made only if no reasonable cause exists to believe the individual arrested committed the offense. When an individual succeeds with this process, the police reports, fingerprints, booking photos and all records of the arrest get eliminated. The individual then can legally answer "no" when asked whether he/she has been arrested (PC section 851.8).

Reviewing agencies shall not investigate arrest information related to a successful petition for a finding of factual innocence.

### 115 JUVENILE RECORDS

If a person committed a crime when they were under the age of 18 and the charges were adjudicated in Juvenile Court, the disposition shall not be considered a conviction for background check purposes. Juvenile Court adjudications may be investigated to determine if the underlying conduct should be used as a basis to deny or rescind a criminal record clearance or exemption, similar to an arrest-only incident (see section 113, *Arrest-Only, Initial and Subsequent*). Likewise, a NOA for denial or rescission based on a juvenile adjudication should identify the criminal conduct underlying the juvenile adjudication and not describe it as a juvenile "conviction." When a person under the age of 18 is tried as an adult in superior court, any resulting conviction, except a minor traffic violation, may be used as the basis to deny or rescind a criminal record clearance or exemption.

In some cases, a juvenile court record may be sealed and unavailable for inspection. The records may be sealed automatically by the court or through a petition filed by the person to whom the records pertain or a probation officer. Once sealed, the proceedings are deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events.

Five years after the jurisdiction of the juvenile court over a person is terminated, the probation officer may destroy all probation records concerning the person.

With limited exceptions, juvenile court records shall be destroyed five years after the record has been sealed or once the person reaches a particular age, depending on the conduct that lead to the Juvenile Court's jurisdiction over the person. Alternatively, a person may request the release

of the records to him or herself. The proceedings in any case in which the juvenile court record is destroyed or released to the person shall be deemed never to have occurred, and the person may reply accordingly to any inquiry about the events in the case.

### 116 WARRANTS

A warrant is a legal process initiated at the municipal or superior court level. If an individual has been cited or arrested for any crime and he/she does not make a mandated court appearance, a judge will issue a warrant for that individual's arrest.

The Department of Justice will attempt to obtain the adjudication of the warrant before the rap sheet is forwarded to the reviewing agency; however, in many instances the reviewing agency will see warrant information on the initial rap sheet.

If an individual has convictions for which he or she has requested an exemption, the reviewing agency must contact the court or agency that issued the warrant to determine if the warrant is still outstanding or valid prior to making a decision to grant or deny the exemption. Court records should be obtained when appropriate to show that a bench warrant was issued, as this information is relevant as a factor in aggravation to show failure to comply with a criminal sentence and court records will often show whether the individual's term of probation was extended.

#### a. Initial Inquiry Only

Contact the court or review its website to determine if the warrant is valid, current or active or resulted in a conviction.

- If there is a warrant that is valid, current, or active, close the case and send a written notification.
- However, note that a clearance may be appropriate if there are no convictions, nothing in the person's criminal history indicates a potential risk to the health and safety of a child, and the warrant is for an infraction that would not require a criminal record exemption.

#### b. Subsequent

If the reviewing agency becomes aware, either through a subsequent rap sheet or any other means, that the individual has an outstanding warrant and the individual has been granted a criminal record clearance or an exemption, agencies must:

- Contact the resource family to determine if the individual is still in the home. If not, close the case. If yes, continue.
- Contact the court to determine if the warrant is valid, current or active or resulted in a conviction.
- Conduct an investigation, if there is any conduct indicating a potential risk to the health and safety of a child or other person.
- Consider contacting the law enforcement agency that issued the warrant and advise them that the reviewing agency is aware of the current residence and/or work site of the individual.

## **117 DIVERSION/DEFERRED ENTRY OF JUDGMENT**

Diversion programs are detailed in the Penal Code 1000 through 1000.12 and 1001 through 1001.67. These programs afford some criminal defendants an opportunity to avoid further prosecution and civil disabilities by participating in a work program, educational program, or rehabilitative counseling. Depending on the program type, the individual's success or failure in the program, and any civil disability protection obtained, an exemption may or may not be appropriate.

When referencing diversion programs, rap sheets often provide unclear or insufficient information. The diversion program type may or may not be listed. The term "terminated" is not consistently used by the courts and could mean completion or failure of the diversion program. Additionally, "reinstatement of the criminal proceedings" does not necessarily indicate that the person has been or will be convicted. Check records to ensure accuracy. Once the diversion program is identified, approval agencies shall review the underlying statutory authority to determine whether or not the relevant criminal history can be considered for RFA purposes. On successful completion of the program, the charges are dismissed, the person need not disclose the arrest or diversion, and the record of arrest shall not be used to deny employment, licensure, benefits, or certification. Because RFA is not a licensing or certification program, the record of arrest may be considered notwithstanding the successful completion of this diversion program.

NOTE: Participation in a diversion program is not "Awaiting Trial" and therefore, the individual's case cannot be closed pending completion of the diversion program.

If the case results in a conviction, both the crime and the nature of the individual's participation in the diversion program may be considered in the processing of an exemption request.

Identifying the Diversion Program and its effect:

Because each diversion program under the Penal Code has its own criteria and protections, the specific diversion program and the individual's progress in that program must be identified. Take the following steps:

1. Check the rap sheet. If the information is absent or cursory, contact the court and/or probation department for assistance identifying the specific diversion program and the individual's progress in that program. Obtain the court records reflecting the individual's referral to diversion program.
2. If still unable to identify the diversion program and individual's progress, send written notification to the individual requesting identification and documentation of the criminal charge, the diversion program, the progress made in the program, and the expected completion date.
3. Obtain and analyze the written response and any supporting documents to determine the diversion program used and the progress made.

Informal Diversion/Probation Note: Completion of an informal diversion/ probation program will not prevent the reviewing agency from proving conduct to exclude. These are often referred to as District Attorney (DA) diversion, county diversion or deferred prosecution. Determine the

following: 1) Whether or not it is an informal diversion program; 2) Whether or not a conviction exists; and/or 3) Whether an arrest-only investigation is appropriate.

Below are the most common diversion programs and instructions on how to process them based on the civil relief detailed in each statutory section. **Be sure to check the Penal Code section of the relevant diversion program to ensure that there have been no changes to the statute.** Check with a consulting attorney if necessary.

After Identifying the Diversion Program, Process as Follows:

### **PENAL CODE §1000 – 1000.8 DIVERSION PROGRAM**

This program is an 18 month to three year diversion program for DRUG OFFENDERS. It may also be called Deferred Entry of Judgment. Although a plea of guilty is required, the plea is conditional and cannot be used to deny or exclude. Upon successful completion, the charges are dismissed, the person need not disclose the arrest or diversion, the arrest is deemed never to have occurred, and the record of arrest can no longer be used to deny a resource family certificate or exclude.

- A. Process as an arrest-only at any time prior to successful completion (see section 113, *Arrest-Only, Initial and Subsequent*).
- B. Process as a conviction if the person fails the program and is convicted.
- C. Process as a clearance if the person successfully completed the diversion program, there are no additional convictions, and the case is inappropriate for continued investigation as described in D.
- D. Process as an arrest-only investigation after successful completion ONLY if independent or additional evidence exists to prove conduct posing a risk of threat to the health and safety of a child or nonminor dependent. This is because **the arrest is deemed to never have occurred**. Additional evidence includes evidence obtained independent of the arrest record, or evidence developed from the arrest record prior to successful completion of the diversion program. Check for any Child Abuse Central Index hits.

### **PENAL CODE §1000.6 DIVERSION PROGRAM (1985-1995) (Repealed January 1, 1996.)**

This was a diversion program for individuals charged with DOMESTIC VIOLENCE OTHER THAN SPOUSAL ABUSE (violence or threat of violence against family or household members). A plea was not required. Statements made in the program are inadmissible. Upon successful completion, the charges were dismissed, the person need not disclose the arrest or diversion, the arrest was deemed never to have occurred, and the record of arrest can no longer be used to deny a resource family certificate or exclude.

- A. Process as an arrest-only at any time prior to successful completion (see section 113, *Arrest-Only, Initial and Subsequent*).
- B. Process as a conviction if the person fails the program and is convicted.

- C. Process as a clearance if the person successfully completed the diversion program, there are no additional convictions, and the case is inappropriate for continued investigation as described in D.
- D. Process as an arrest-only investigation after successful completion **ONLY** if independent or additional evidence exists to prove conduct posing a risk of threat to the health and safety of a child or nonminor dependent. This is because **the arrest is deemed to never have occurred**. Additional evidence includes evidence obtained independent of the arrest record, or evidence developed from the arrest record prior to successful completion of the diversion program. Check for any Child Abuse Central Index hits.

**PENAL CODE §1000.12 DIVERSION PROGRAM**

A person charged with PHYSICALLY ABUSING OR NEGLECTING A MINOR VICTIM may be referred to counseling in lieu of criminal prosecution. The criminal conduct must NOT have involved sex abuse, molest, force, or violence. A plea is not required. Charges are dismissed after successfully completing counseling.

- A. Process as a clearance if the person has no convictions.
- B. Process as a conviction if the person fails the program and is convicted.
- C. Process as an arrest-only investigation at any time (Cross reference arrest only section). The reviewing agency may use the record of arrest and any other available evidence to prove that the individual neglected or abused a minor victim (conduct inimical), even after successful completion of this diversion program.

**PENAL CODE §1001 – 1001.9 DIVERSION PROGRAM**

This is a pretrial MISDEMEANOR DIVERSION PROGRAM that does not require a plea. It may last up to two years. Statements made in the program are inadmissible. Upon successful completion, the charges are dismissed, the person need not disclose the arrest or diversion, the arrest is deemed never to have occurred, and the record of arrest can no longer be used to deny a resource family certificate or exclude.

- A. Process as an arrest-only at any time prior to successful completion (see section 113, *Arrest-Only, Initial and Subsequent*).
- B. Process as a conviction if the person fails the program and is convicted.
- C. Process as a clearance if the person successfully completed the diversion program, there are no additional convictions, and the case is inappropriate for continued investigation as described in D.
- D. Process as an arrest-only investigation after successful completion **ONLY** if independent or additional evidence exists to prove conduct posing a risk of threat to the health and safety of a child or nonminor dependent. This is because **the arrest is deemed to never have occurred**. Additional evidence includes evidence obtained independent of the arrest record, or evidence developed from the arrest record prior to successful completion of the diversion program. Check for any Child Abuse Central Index hits

**PENAL CODE §1001.20 – 1001.34 DIVERSION PROGRAM**

This is a diversion program for persons with COGNITIVE DEVELOPMENTAL DISABILITIES who are charged with any misdemeanor offense. It can last up to two years. A plea is not required. Statements made in the program are inadmissible. Upon successful completion, the charges are dismissed, the person need not disclose the arrest or diversion, the arrest is deemed never to have occurred, and the record of arrest can no longer be used to deny a resource family certificate or exclude.

- A. Process as an arrest-only at any time prior to successful completion (see section 113, *Arrest-Only, Initial and Subsequent*).
- B. Process as a conviction if the person fails the program and is convicted.
- C. Process as a clearance if the person successfully completed the diversion program, there are no additional convictions, and the case is inappropriate for continued investigation as described in D.
- D. Process as an arrest-only investigation after successful completion ONLY if independent or additional evidence exists to prove conduct posing a risk of threat to the health and safety of a child or nonminor dependent. This is because **the arrest is deemed to never have occurred**. Additional evidence includes evidence obtained independent of the arrest record, or evidence developed from the arrest record prior to successful completion of the diversion program.

**PENAL CODE §1001.60 – 1001.67 DIVERSION PROGRAM**

This is a diversion program for persons who WRITE CHECKS WITH INSUFFICIENT FUNDS in violation of Penal Code § 476a, a misdemeanor. The program does not require a plea, and statements made in the program are inadmissible. The program can last up to six months.

- A. Process as a clearance if the person has no convictions.
- B. Process as a conviction if the person fails the program and is convicted.

**PENAL CODE §1001.70 – 1001.75 DIVERSION PROGRAM**

This diversion program is for PARENTS OR LEGAL GUARDIANS who have contributed to their own children's unlawful behavior in violation of Penal Code § 272, contributing to the delinquency of a minor. The program does not require a plea, and statements made in the program cannot be used to deny or exclude. The program can last up to two years. Upon successful completion, the charges are dismissed, the person need not disclose, **the arrest is deemed never to have occurred**, and the record of arrest can no longer be used to deny a resource family certificate or exclude.

- A. Process as an arrest-only at any time prior to successful completion (see section 113, *Arrest-Only, Initial and Subsequent*).
- B. Process as a conviction if the person fails the program and is convicted.

- C. Process as a clearance if the person successfully completed the diversion program, there are no additional convictions, and the case is inappropriate for continued investigation as described in D.
- D. Process as an arrest-only investigation after successful completion ONLY if independent or additional evidence exists to prove conduct posing a risk of threat to the health and safety of a child or nonminor dependent. This is because **the arrest is deemed to never have occurred**. Additional evidence includes evidence obtained independent of the arrest record, or evidence developed from the arrest record prior to successful completion of the diversion program. Check for any Child Abuse Central Index hits.

### **PENAL CODE §1210 and 1210.1 TREATMENT PROGRAM (PROP 36)**

This treatment program for NONVIOLENT DRUG OFFENDERS is offered as a condition of probation, meaning the person stands convicted until dismissed upon successful completion. Upon successful completion, the conviction is dismissed, the arrest is deemed never to have occurred, and the record of arrest can no longer be used to deny a resource family certificate or exclude.

- A. Process as a conviction at any time prior to successful completion and dismissal of the conviction. The person has a conviction until it is dismissed.
- B. Issue a clearance after successful completion and dismissal of the conviction. Investigation into the conduct may be initiated or continued as described in C below.
- C. Process as an arrest-only investigation after successful completion only if independent or additional evidence exists to prove the conduct or continue the investigation. Additional evidence includes evidence obtained independent of the arrest record, or evidence developed from the arrest record prior to successful completion.

## **118 CHANGES IN DISPOSITIONAL STATUS, POST-CONVICTION**

### **a. Governor's Pardon**

The denial of an exemption cannot be based on the record of a criminal conviction that has been pardoned. Such a denial is not authorized by statute and is prohibited by law. If in doubt about the status of the conviction, discuss with the consulting attorney.

### **b. Expungement**

Convictions that have been set aside or dismissed per Penal Code (PC) sections 1203.4 or 1203.4a are considered convictions for exemption processing purposes pursuant to these PC sections and H&SC 1522(f). When the court sets aside or dismisses convictions based on these PC sections, it means that the convicted individual has satisfactorily fulfilled his or her probationary period and has applied to the court to set aside/dismiss the plea and/or the verdict. It does not mean that the individual was never convicted of the crime or is rehabilitated. Therefore, the individual is required to disclose the conviction on the RFA 01B.

Note: Any conviction rendered as a result of a *nolo contendere* plea is a conviction and shall be evaluated accordingly pursuant to H&SC section 1522(f).

### c. Reduction

Crimes that are punishable as either a felony or a misdemeanor, at the discretion of the court, are known as “wobblers.” An individual who is convicted of a felony crime considered a wobbler can petition the court for a reduction of the conviction to a misdemeanor per PC 17. If the conviction is reduced pursuant to PC 17, it is considered a misdemeanor **for all purposes**, including Resource Family Approval background checks.

Example: A rap sheet with a felony conviction for PC 273.5 – Corporal Injury of a Spouse/Cohabitant may indicate that the conviction has been reduced to a misdemeanor pursuant to PC 17. While a felony conviction for PC 273.5 is a non-exemptible crime (see Adam Walsh federal non-exemptible crimes list), this conviction is now considered a misdemeanor for all purposes, and the individual is eligible to request a criminal record exemption.

## 119 EXEMPTIONS

An exemption is a Department of Social Services authorized written document that “exempts” an individual from the requirement of having a criminal record clearance (see section 102, *Criminal Record Clearance*).

An individual who has been convicted of a crime (other than a minor traffic violation or a specific marijuana-related conviction more than 2 years old) is disqualified from RFA or residing or being regularly present in a resource family home unless the individual is granted a criminal record exemption by the reviewing agency. A “minor traffic violation” means a violation of the Vehicle Code which has been deemed an infraction or a violation of any other law which has been deemed an infraction.

Exemptions are granted under the following circumstances:

- Standard – A standard exemption may be granted if the reviewing agency is in possession of substantial and convincing evidence to support a reasonable belief that the individual is rehabilitated and of present good character necessary to justify the granting of an exemption.
- Simplified – A simplified exemption shall be granted if the summary criminal history information (i.e., CORI/rap sheet, self-disclosures, etc.) independently supports a reasonable belief that the individual is rehabilitated and of present good character necessary to justify the granting of an exemption. However, an individual whose criminal history satisfies the simplified exemption criteria may be required to complete the standard exemption process if doing so is necessary to protect the health and safety of a child or nonminor dependent.

An individual convicted of certain crimes specified in statute cannot obtain an exemption (see section 111, *Non-Exemptible Crimes* for a list of the crimes that are non-exemptible).

- An individual convicted of crimes that are *not* classified as non-exemptible may request an exemption.

If the reviewing agency requires an individual to complete the standard exemption process, the applicant/Resource Family must be sent a notice informing them that the individual must obtain a criminal record exemption, provided there are no convictions for non-exemptible crimes.

Concurrently, send the affected individual a corresponding notice to his or her address on record informing him or her of the same. This notice to the affected individual must include a copy of his/her Criminal Offender Record Information (CORI) (see section 109, *Criminal Offender Record Information*).

**NOTE: Notwithstanding the granting of an exemption, the reviewing agency shall consider all criminal history information during the psychosocial assessment.**

**The following are the 3 types of exemption processes:**

1. **Standard Exemption** – The standard exemption process is used to evaluate an individual's criminal history if he or she has a conviction that meets any of the following criteria:
  - Felony conviction within the past 7 years;
  - Misdemeanor conviction within the past 5 years;
  - Misdemeanor Conviction for Penal Code §261.5 (statutory rape);
  - Misdemeanor Conviction for Penal Code §314 (lewd or obscene exposure of private parts);
  - Misdemeanor Conviction for Penal Code §368 (elder or dependent adult abuse).
2. **Simplified Exemption** – The simplified exemption process may be used for individuals whose criminal history does not meet any of the criteria listed above for a standard exemption. The simplified exemption process entails only an examination of the convicted person's rap sheet and any written or verbal self-disclosures received by the reviewing agency. The simplified exemption does not require a response from the individual and/or Resource Family.

**Note: The reviewing agency has discretion to require a criminal record exemption using the standard exemption process even if the conviction(s) meets the simplified exemption criteria and is not on the non-exemptible list.**

3. **Individual Exemption** – If the Resource Family elects not to pursue an exemption on behalf of an affected individual and the individual no longer resides or is regularly present in the home, the affected individual has the right to request an individual exemption on his/her own behalf. A reviewing agency may associate the individual to a RFH on receipt of a written request from a Resource Family/applicant.

### **a. Standard Exemption**

Upon receiving a rap sheet that contains a conviction that does not meet the simplified exemption criteria (see section 123, *Arrests and Convictions – Subsequent to Clearance or Exemption*) and is not on the non-exemptible crimes list (see B. *Simplified Exemption* below), the reviewing agency must immediately notify the Resource Family and the affected individual with separate, concurrent letters indicating the need for an exemption. An individual who has been convicted of a crime, other than a minor traffic violation, cannot obtain Resource Family

approval, nor can he/she reside in or be regularly present in a Resource Family home unless granted a criminal record exemption by the reviewing agency. Subsequent to approval, if additional criminal history information is received, the Resource Family and/or associated individual must seek an exemption to maintain approval (see section 123, *Arrests and Convictions – Subsequent to Clearance or Exemption*).

The standard exemption process requires the compilation and evaluation of relevant information that would support the approval or denial of an exemption request. A decision can be made only after all submitted documentation has been reviewed.

**(1) Exemption Needed notices require that the following be submitted within forty-five (45) calendar days from the date on the notice:**

- (A) A signed exemption needed letter indicating that an exemption is being requested, returned from the Resource Family applicant, the Resource Family applicant on behalf of the individual, or the individual on his/her own behalf if the Resource Family chooses not to request an exemption.
- (B) A signed copy of the original *Resource Family Criminal Record Statement* ([RFA 01B](#)).
- (C) A written statement signed by the individual describing the events surrounding each conviction, including the approximate date, what happened, why it happened, and any other information he/she feels is important about the crime. The individual also must describe what he/she has done since the conviction to ensure he/she will not be involved in further criminal activity.
- (D) Documentation relevant to the conviction listed as the basis for the exemption including but not limited to: minute order or other court record, court docket or transcript, law enforcement records, and records from the Probation Department or California Department of Corrections and Rehabilitation (CDCR).
- (E) Verification of court ordered trainings, classes, courses, treatment, counseling completed, or other documentation demonstrating rehabilitation.
- (F) Three **signed, original, and current character** references, including the telephone number and address where he or she can be contacted. Character references must be current. The [LIC 301E](#) may be used as a guide to ensure the relevant information is captured by the person providing the reference. An individual listed as a reference on a Resource Family Application form (RFA 01A) may be the same individual providing a character reference for a criminal record exemption request.

**(2) Evaluation of Standard Exemption**

The reviewing agency must evaluate each exemption request and consider various factors, including but not limited to the following, to determine whether there is evidence of present good character and rehabilitation.

The following factors may support a determination that an individual has been rehabilitated and is presently of good character:

- (A) The nature of the crime **or conduct did not involve acts of violence or physical harm to another person.**
- (B) A **substantial** period of time **has elapsed** since the crime was committed **or since the conduct occurred.**
- (C) The number of offenses does not indicate a longstanding pattern of criminal conduct.

- (D) Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.
  - (i) **This factor requires the individual to attempt to obtain a copy of the arrest report. If the individual is unable to obtain the arrest report, the reviewing agency must obtain it to complete the exemption analysis. Because individuals most often cannot obtain these reports or are not provided with un-redacted copies, the burden generally falls upon the reviewing agency to obtain an un-redacted copy of the arrest report. The reviewing agency may only provide the individual with a copy through the discovery process associated to an administrative hearing.**
- (E) Activities since conviction **including, but not limited to,** employment or participation in therapy, education or treatment, that would indicate changed behavior.
- (F) Granting by the Governor of a full and unconditional pardon (see section 118, *Expungements/Pardons*).
- (G) Character references **indicate present good character.**
  - (i) **A character reference that demonstrates a knowledge and understanding of the individual's criminal background and an awareness of the individual's changed behavior and rehabilitation shall be given more weight than those that do not demonstrate such knowledge, understanding, and awareness.**
- (H) A certificate of rehabilitation from a superior court (see section 112, *Certificate of Rehabilitation*).
- (I) Evidence of honesty and truthfulness as revealed in the application documents and interviews.
- (J) Evidence of honesty and truthfulness as revealed in the application interviews and conversations between the individual and the County or Department.

The following factors may support a determination, but is not conclusive evidence, that an individual requiring a criminal record exemption has not been rehabilitated or is not presently of good character:

- (A) False or misleading statements on forms, letters, other documents, or in conversations between the individual or others and the County or Department, in order to obtain or maintain home approval or to obtain or maintain a criminal record exemption. This includes the individual's knowing failure to fully disclose his or her criminal history or child abuse or neglect history when required to do so in application documents or interviews.
  - (i) Evidence may include comments on the Resource Family Criminal Record Statement ([RFA 01B](#)). Failure to provide truthful statements may be grounds for an exemption denial; however, the reviewing agency will have to prove that the person intended to deceive.
- (B) The individual's statements or testimony denies or minimizes guilt or attempts to impeach a conviction.
- (C) The individual has not sought ongoing counseling, treatment or aftercare where such aftercare is determined to be necessary for an alcohol or substance abuse problem or has not completed education or counseling for the underlying cause of criminal behavior, such as anger management, child endangerment or negligent vehicle operation.
- (D) The individual has not paid full restitution or interest to a victim.
- (E) The individual's statements or testimony fails to accept full responsibility for criminal conduct that resulted in a conviction, or the individual fails to express remorse.

- (F) The individual has a conviction within the last 5 years for fraud or theft from a government program.
- (G) The individual is currently on criminal probation.
  - (i) When evaluating criminal probation, the reviewing agency may consider whether the individual successfully completed the terms of probation or parole.
  - (ii) The relevant laws do not prohibit the granting of a criminal record exemption to an individual who is on criminal probation. Criminal probation is one of many factors that the reviewing agency should be considering.

To grant an exemption, the reviewing agency must evaluate the possibility of potential risk to the health and safety of children in care. Factors such as lack of remorse, honesty, integrity or failure to complete required courses or trainings are not automatic grounds for denial if there is other substantial and convincing evidence to support the granting an exemption. In all cases, the rationale for the decision must be thoroughly documented, in writing, in the exemption case file. The analysis must be based on objective facts, not on impressions or other non-objective criteria.

Assuming that an exemption was requested and that all the information specified in this section has been submitted, the exemption request must be evaluated for evidence of present good character and rehabilitation.

### **(3) Present Good Character/Rehabilitation**

Rehabilitation can be determined by an individual's conduct following his or her conviction(s). The Department has issued a precedential decision clarifying that assertions of rehabilitation are no substitute for a track record of accomplishment when showing rehabilitation from drug use (see *In Re Dodd*, 99 CDSS 08).

The reviewing agency must consider all evidence relevant to what the individual has done since his/her last conviction to demonstrate "rehabilitation and present good character." For example, for a person with an alcohol or substance abuse history, rehabilitation is almost universally predicated on a choice to confront his or her problem, obtain treatment, followed by sobriety, and sustained through aftercare such as ongoing participation in a supportive program such as AA, NA, or another 12-Step program, a counseling program, or obtaining a sponsor.

Another example is that if the person has a history of domestic violence, rehabilitation may include completion of counseling or an anger management or domestic violence class, combined with the person's statements indicating they accept responsibility for their conduct, do not blame the victim, have learned the cause for their prior at-risk behavior and now respond appropriately.

For crimes of dishonesty such as forgery or theft, the Department has issued a relevant precedential decision, *In re Powell*, 99 CDSS 17. This precedential decision states the importance of being able to trust the truth and veracity of those who deal directly with foster children, since we rely upon them to truthfully report any incidents that may arise as well as engender honesty as a positive role model.

The affected person must present substantial and convincing evidence satisfactory to the reviewing agency that he/she has been rehabilitated and presently is of such good character as to justify being granted an exemption

### (4) References

Carefully review the character references. Consider the following:

- ✓ Are references complete and legible?
- ✓ Are they from a relative, employee, resident of the home, or the applicant/resource family?

References may be contacted, as necessary. Failure to submit character references may result in an exemption denial. The reviewing agency has discretion, however, to approve an exemption when the individual submits fewer than 3 character references, provided sufficient evidence of rehabilitation exists.

If any document or information is missing, either contact the individual or send an *Additional Information Needed* letter.

### (5) Additional Factors

Carefully review the convictions while considering the following:

- (A) The roles and responsibilities of the Resource Family and the individual's position or relationship to the family.
- (B) The individual's sphere of influence in the home and potential opportunity to harm a child. Do the convictions warrant special consideration, given the relationship of the individual to the family?
- (C) The type of crime in relation to a child in out-of-home care.
  - For example, an individual with convictions for contributing to the delinquency of minors would be a concern if he/she planned on living in a resource family home.

### (6) Conditions

When an individual meets all other exemption approval criteria, but there continue to be concerns about his/her ability to provide a particular element of care or be regularly present or reside in the home, the worker may recommend approval of the exemption with conditions. A conditional exemption places a restriction or condition on a standard exemption which limits contact with a child in out of home care or restricts his/her role in some way, e.g., individual is not to dispense prescription medications to a child or is not to transport children.

**All conditional exemptions should be approved by a manager or designee or equivalent.**

Prior to granting a conditional exemption, the reviewing agency may contact the Resource Family to discuss the parameters of the conditional approval and obtain their agreement with the terms. The Resource Family/individual may decline the conditional exemption and may appeal any subsequent decision to deny (see section 124, *Appeal of the Exemption Denial*).

**A reviewing agency may deny a request for a criminal record exemption if any of the following occurs:**

- (1) The individual, or applicant or Resource Family acting on the individual's behalf, fails to provide the documents specified in the Exemption Needed notice within 45 calendar days from the date on the notice provided by the reviewing agency.
- (2) The individual, or applicant or Resource Family acting on the individual's behalf, fails to cooperate in the exemption process.
- (3) The reviewing agency determines the individual is not of good character or has not been rehabilitated.

NOTE: If a reviewing agency determines there is good cause and documents the reasons, it has discretion to continue evaluating the exemption request beyond the 45 days to provide documents specified in the Exemption Needed notice on a case-by-case basis.

### b. Simplified Exemption

The simplified exemption process cannot be used to deny a criminal record exemption. If appropriate, the simplified process results in an exemption approval without the involvement of either the individual or the Resource Family. Unlike standard exemptions, a simplified exemption does not need to be requested. The simplified exemption process is a review based only on the convicted person's rap sheet and/or any written or verbal self-disclosure during the background check process. This process is designed to expedite the exemption decision by the reviewing agency when the rap sheet independently supports a reasonable belief that the individual is of present good character to justify the granting of an exemption. **The reviewing agency has discretion to require a criminal record exemption using the standard exemption process even if the conviction meets the simplified exemption criteria if doing so is necessary to protect the health and safety of a child or nonminor dependent.**

Factors to consider when determining whether or not to require a standard exemption may include, but are not limited to, any demonstrated pattern of criminal conduct, the time that has passed since the individual's most recent conviction, and any information obtained from the individual's self-disclosure form (RFA 01B).

**NOTE: The simplified exemption process cannot be used to expedite a denial.**

Use of the simplified process must be indicated on the approving agency's criminal record clearance and exemption tracking log. The reviewing agency should notify the Resource Family and the affected individual of the approval by letter. A simplified exemption process may be used when all simplified exemption approval criteria are met.

A simplified exemption may be appropriate if an individual's criminal history does not include a non-exemptible conviction (see section 111, *Non-Exemptible Crimes*) and meets all of the following criteria:

- No felony conviction within the past 7 years;
- No misdemeanor conviction within the past 5 years;
- No convictions for any of the following crimes:
  - Misdemeanor conviction for Penal Code §261.5 (statutory rape);
  - Misdemeanor conviction for Penal Code §314 (lewd or obscene exposure of private parts);
  - Misdemeanor conviction for Penal Code §368 (elder or dependent adult abuse).

In deciding whether the reviewing agency should use its discretion in requiring an individual to complete the standard exemption process, the following may be considered:

1. The individual has a demonstrated pattern of criminal activity.
2. The conviction(s) involved violence and may pose a risk to the health and safety of a child.
3. To be determined by reviewing the penal code language, the elements of the crime, and the original charges.
4. If there is any arrest that meets the investigation criteria at H&SC 1522(e).
5. If there is an arrest for a non-exemptible crime at any time (see section 111, *Non-Exemptible Crimes*).
6. The rap sheet indicates that the individual was initially charged with a felony or a crime that requires an investigation, but the charge was reduced and the person was subsequently convicted of a misdemeanor.
7. The rap sheet indicates that the individual was initially convicted of a felony, but the conviction was subsequently reduced to a misdemeanor per 17PC.
8. The individual is currently on formal (i.e., supervised) and/or informal (i.e., conditional, summary, or court) probation.
9. Prior or present administrative actions.

### 120. CERTIFIED RECORDS OF ARRESTS AND CONVICTIONS

#### a. Convictions

A record of conviction is a record maintained by the court or other agency that documents the finding that a person was convicted of a crime and contains information on any sentence or fine. It may also indicate the reasons why the person was convicted. The most common types of court records used to prove a conviction are a judgment of conviction, a sentencing order, or a signed waiver and plea agreement. For the signed waiver and plea you should also obtain the District Attorney's complaint or information, which will show the charges identified in the waiver and plea. If the court's conviction record has been purged, the court will often still be able to provide a certified copy of the court docket or other disposition record.

Counties shall have a legal consult prior to denying an exemption. The consult will confirm which state agency, Office of Administrative Hearings (OAH) or CDSS State Hearings Division (SHD), will conduct the administrative hearing in the event the denied exemption is appealed.

- For SHD, it is a best practice to obtain a certified copy of court conviction records, DOJ arrest disposition, or CDCR 969b packet and/or any crime reports, but certified documents are not required.
- For OAH, a certified copy of the court conviction record, DOJ arrest disposition, or CDCR 969b packet and/or any crime reports is required, unless verification of convictions listed on the rap sheet has been obtained through a written admission by the individual or from a "stipulation to convictions."

The certified court conviction records may be obtained by requesting the document from the office of the county court clerk in the county where the person was convicted. The specific county is usually noted in the agency column of the rap sheet. If the conviction occurred outside of California, attempt to identify the appropriate out-of-state agency and request a copy of the court conviction record.

A court may be unable to respond to the reviewing agency's letter of request because the information on the rap sheet is so vague that it is impossible to determine in what court system the person was convicted, or there is no record of the conviction because the record has been purged and an electronic docket is not available. If unable to obtain a court conviction record and the individual does not admit to the conviction in writing, the reviewing agency may obtain certified copies of disposition information, also known as the DOJ arrest disposition, by contacting the Department of Justice, Bureau of Criminal Identification and Analysis, Keeper of Records. The Department of Justice will provide this information if the stated purpose is for an "administrative law hearing only." An investigative subpoena is required. You may contact the DOJ either via email at [keeperofrecords@doj.ca.gov](mailto:keeperofrecords@doj.ca.gov) or telephone at (916) 210-3310. A California Department of Corrections and Rehabilitation (CDCR) 969b prison packet may be obtained from CDCR to prove a conviction for someone previously incarcerated in prison.

If a reviewing agency obtains information that a conviction actually occurred during the course of an arrest investigation, this newly-discovered conviction must be processed pursuant to section 123, *Arrests and Convictions – Subsequent to Clearance or Exemption*.

### **b. Arrests**

If the subject of an exemption or arrest investigation is unable to obtain un-redacted arrest or other law enforcement reports, the reviewing agency must obtain the reports in order to evaluate the underlying conduct. If the reviewing agency is going to issue a Notice of Action (NOA), the reviewing agency must obtain certified copies of these reports in order to use them as evidence at hearing.

The law enforcement records may be obtained by requesting them from the office where the person was arrested or cited. The specific city or county is usually noted in the agency column of the rap sheet. If the arrest occurred outside of California, attempt to identify the appropriate out-of-state agency and request a copy of law enforcement report.

### **c. Unavailable Records**

Despite a reviewing agency's best efforts, arrest and conviction records may be unavailable due to the agency's retention policies or unresponsiveness. If a specific record is no longer available, the agency will usually respond with a letter indicating the record has been purged. Sometimes a "purged" letter will contain information regarding the conviction and disposition which can be used as evidence. However, there are instances when an agency will not respond to a request for records. A reviewing agency should document efforts to obtain records. If multiple attempts to obtain records have been made and the reviewing agency has not received a response, a designated person, as determined by the reviewing agency, should make a determination that the documents are unavailable. As always, counties may utilize a legal consult to determine the appropriate course of action based on the evidence obtained. If a county plans to seek an exemption denial or rescission, a legal consult is required prior to issuing a Notice of Action.

## **121 NOTIFICATION OF THE EXEMPTION DECISION**

Apply the following procedures when sending notifications regarding the exemption decision:

### a. Approval

When granting a standard or simplified exemption, it is best practice to send separate and concurrent written notifications to the Resource Family and to the affected person.

Individual – Following an exemption needed notice, if the person is no longer associated to the home, the affected person still has a right to seek an exemption on his or her own behalf (i.e., an individual exemption). It is best practice to send a written notification of an individual exemption approval to the affected individual. This process is for an individual who is not residing in or regularly present in a resource family home.

### b. Denial

- (1) Standard – Prior to issuing a Notice of Action (NOA) ([RFA 09B Notice of Action to Individual Regarding Resource Family Approval Criminal Record Exemption Decision](#)) for denial of a criminal record exemption, the reviewing agency must seek a legal consult. When a reviewing agency issues a NOA for an exemption denial or rescission to the individual, and the denial or rescission requires an action against the resource family or applicant, the criminal history of the individual who is the subject of the exemption decision shall not be listed in the NOA to the family or applicant. A separate NOA for denial or rescission of the approval must be sent to the family or applicant that does not include the criminal history. The reviewing agency must notify the applicant or Resource Family of the denial or rescission using [RFA 09: Notice of Action Regarding Resource Family Approval](#) and must concurrently notify the affected person using [RFA 09B: Notice of Action to Individual Regarding Resource Family Approval Criminal Record Exemption Decision](#). These forms can be found on the CDSS RFA website:

<http://www.cdss.ca.gov/inforesources/Resource-Family-Approval-Program>

- A. RFA Applicant/Resource Family – If the reviewing agency denies or rescinds the exemption of an applicant or Resource Family, the application must be denied or the Resource Family approval must be rescinded.
  - B. Associated Individual – If the reviewing agency denies or rescinds the exemption of a prospective or actively associated individual, the individual may not reside or be regularly present in the home until an exemption is granted (see section on “Individual” below). If the person continues to reside or be regularly present in the home, the application must be denied or the Resource Family approval must be rescinded. Use the legal consult to determine if an exclusion action is appropriate based on conduct that did not result in a conviction.
- (2) Individual – If an individual who resides or is regularly present in the home is denied a criminal record exemption, the reviewing agency shall inform the Resource Family and the individual of the fact through separate, concurrent NOA notices. If the affected individual is no longer residing or regularly present in the home, he/she has the right to appeal the exemption denial or rescission on his/her own behalf.

Note: All NOAs must include the reason an exemption was denied. The reason cannot include specific information about the conviction(s) in communications with persons other than the affected individual.

However, specific details can be disclosed on the NOA when they were obtained from one of the following sources, independent of criminal history information received from the Department of Justice pursuant to the background check:

- Admissions by the individual in the [RFA 01B](#) (*Resource Family Criminal Record Statement*) or [LIC 508D](#) (*Out-of-State Disclosure & Criminal Record Statement*) or a written statement describing a crime;
- The reviewing agency has obtained a certified copy of a court record of a criminal conviction;
- The reviewing agency has an arrest disposition from DOJ;
- The reviewing agency has conviction records from the county District Attorney's office, Probation Department or the California Department of Corrections and Rehabilitation; or
- The reviewing agency has a statement from a reliable third party non-applicant regarding a conviction.

### **122 CLEARANCE OR EXEMPTION TRANSFER** *(For County Resource Families Only)*

If a Resource Family applicant or resident indicates that he/she is currently a licensed foster family home, approved relative/NREFM home, or an approved resource family with a completed background check, the clearance or exemption documentation of that check and subsequent arrest notifications (rap back service) may be transferred from one reviewing agency to another, provided that all of the following occur:

1. The transfer is within the RFA/foster care applicant type. The following are defined by the Department of Justice as the same applicant type under RFA for the purposes of conversion; therefore, transfers between these category types are allowed: Resource Family Homes, Relative/ Nonrelative Extended Family Member (NREFM) Homes, and Licensed Foster Family Homes.
2. The individual has an "active" status at the Department of Justice. That is, the original approval or licensing agency is still authorized to receive subsequent history information from the Department of Justice and has not made the applicant inactive by submitting a "No Longer Interested (NLI) Notification" form ([BCIA 8302](#)) to the Department of Justice.
3. The Department of Justice confirms that the authority to receive subsequent rap service has been transferred to the reviewing agency requesting the transfer (see below for specifics).

The reviewing agency requesting the transfer must contact the agency that previously processed the background check to determine whether the background check is eligible for a transfer and to inquire as to whether the individual has a clearance or a criminal record exemption.

For background checks processed by the Community Care Licensing Division (i.e., foster family homes), contact Caregiver Background Check Bureau Customer Service at (888) 422-5669. If the background check was processed by a county licensing agency and the correct office

cannot be located, contact your County Liaison. If the background check was processed by a county relative reviewing agency, contact the county's Relative Assessment or Kinship Unit or RFA Single Point of Contact.

The reviewing agency requesting the transfer must also review the date of the Child Abuse Central Index check. If the inquiry was made prior to January 1, 1999, the individual must submit a new Child Abuse Central Index request as part of the transfer process. The reviewing agency requesting the transfer must ensure that the applicant submits to the Department of Justice a Child Abuse Central Index Check for County Licensed Facilities ([LIC 198](#)), the current processing fee, and the Substitute Agency Notification Request ([BCII 9002](#)) with Steps I and II completed.

NOTE: The original agency shall not forward the individual's CORI to another agency at any time. Any CORI/RAP sheet received from DOJ may not be shared with anyone with the exception of the affected individual. However, the reviewing agency exemption decision documents may be shared.

### **a. Transferring a Criminal Record Clearance**

A criminal record clearance to provide foster care in a state-licensed facility or approved home may be transferred to a resource family home provided:

- (1) The Resource Family/applicant has requested a criminal record clearance transfer, in writing, via the BCII 9002 or another template and provided proof of identification. The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the Department and the Department of Justice. If proof of identification was not received with the written request, timely follow up is needed.
- (2) A Federal Bureau of Investigation criminal history check has been completed and results received prior to transfer for Resource Family Homes.
- (3) Department of Justice confirms that the authority to receive subsequent rap service has been transferred to the reviewing agency requesting the transfer.

### **A. Relocation Between Counties**

The reviewing agency may allow an individual to transfer his or her subsequent arrest notification if the individual moves from one county to another, as specified in H&SC section 1522(h). If a Resource Family moves to a different county, the approval remains in full force and effect unless approval is rescinded or the family chooses to surrender the approval.

#### **i. Process for Requesting and Completing a Transfer of Clearance**

If the individual's background check is eligible for a transfer and the individual has a criminal record clearance, the county requesting the transfer must:

- Give the individual a copy of the Substitute Agency Notification Request ([BCII 9002](#)), the phone number of the agency that processed the background check and instructions to:

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- Complete Step I of the form (applicant information).
- Contact the licensing or reviewing agency that processed the clearance to obtain information to complete Step II.
- Return the form with Step I and Step II completed.
- When the individual returns the form with Steps I and II completed, complete Step III and forward the form to the Department of Justice.
  - If accepted, the Department of Justice will cease processing subsequent arrest notifications for the licensing or reviewing agency that processed the clearance and return a copy of the form confirming that the authority to receive rap back service has been transferred to the reviewing agency requesting the transfer.
- When the approved form is received from the Department of Justice, send a copy of the form to the agency that processed the clearance.
  - The licensing or reviewing agency receiving notice that the Department of Justice has authorized the transfer of subsequent rap service to the reviewing agency must inactivate the individual and send a No Longer Interested Notification (BCIA 8302) to the Department of Justice. Copies of the form are available on the Department Of Justice website:

<https://www.oag.ca.gov/fingerprints/forms>

An applicant cannot be approved as a Resource Family until the Department of Justice has approved the transfer.

### **b. Transferring a Criminal Record Exemption**

Resource Families who relocate shall retain their resource family status pending the outcome of an update to Resource Family Approval. In addition to resource family relocation between counties, exemptions originally granted for foster family homes and relative/NREFM homes that are now applying to convert to a Resource Family may be transferred for conversion purposes.

If the exemption was originally issued by another County or the Department the reviewing agency requesting the transfer must:

- Give the individual a copy of the Substitute Agency Notification Request (BCII 9002), the phone number of the agency that processed the original exemption, and instructions to:
  - Complete Step I of the Substitute Agency Notification Request form ([BCII 9002](#)) – applicant information.
  - Contact the licensing or reviewing agency that processed the original exemption to obtain information to complete Step II.
  - Return the form with Step I and Step II completed.
- Request the exemption case file from the agency that granted the exemption. Specify that the file must contain all criminal history information and all relevant exemption support material. The exemption file must be provided in a manner to protect the confidentiality of the records. All original documentation regarding the individual's exemption will be maintained by the agency requesting the transfer.

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The original agency shall maintain copies of all exemption decision records for three (3) years for federal compliance purposes.

NOTE: The original agency shall not forward the individual's CORI with the exemption case file. Any CORI/RAP sheet received from DOJ may not be shared with anyone with the exception of the affected individual.

- Review the exemption case file to determine:
  - Whether the individual's conviction(s), for which the exemption was granted, is now non-exemptible:

If the individual's exemption was granted for a conviction that is now non-exemptible, the exemption must be rescinded and the transfer denied (see section 125, *Administrative Actions*).

- If the receiving agency believes that the prior exemption was granted in error, or there is new evidence indicating a potential risk to the health and safety of a child in out of home care or other individual, the prior exemption should be reviewed anew.

If the individual's exemption does not address or include all convictions, process a new exemption that includes all convictions.

NOTE: If the reviewing agency has any questions or doubts about the veracity of the exemption that was previously granted, consult with Legal. However, the receiving agency may not re-evaluate a previous exemption decision absent one of the extenuating circumstances discussed above pursuant to H&SC 1522(h)(3).

If it is determined that the exemption can be transferred, the reviewing agency requesting the transfer must:

- Complete Step III of the Substitute Agency Notification Request ([BCII 9002](#)) and send the completed form to the Department of Justice.
  - If accepted, the Department of Justice will return a copy of the form confirming that authorization to receive subsequent arrest notifications has been transferred to the reviewing agency requesting the transfer.
- When confirmation is received from the Department of Justice, send a copy of the form to the reviewing agency that processed the exemption.
  - The licensing or reviewing agency receiving notice that the Department of Justice has authorized the transfer of subsequent arrest notifications to the reviewing agency must inactivate the individual and send a No Longer Interested Notification ([BCIA 8302](#)) to the Department of Justice. Copies of the form are available on the Department of Justice link below:

<https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/nli.pdf>

The transfer cannot be approved until Department of Justice has confirmed that the authority to receive subsequent rap service has been transferred.

Subsequent to an approved transfer, the reviewing agency must continue to enforce and incorporate, as part of an approved exemption notification, any condition(s) placed on the individual pursuant to the previously granted exemption.

### 123 ARRESTS AND CONVICTIONS – SUBSEQUENT TO CLEARANCE OR EXEMPTION

The Department of Justice will continue to send the reviewing agency subsequent arrest notifications unless otherwise notified by the reviewing agency that the individual is no longer associated to an approved resource family home or subsequent rap back service has been transferred to another reviewing agency.

#### a. Arrests

If an individual was allowed in a home because he/she had a clearance or a criminal record exemption and the reviewing agency subsequently receives a rap sheet containing an arrest but no convictions, the individual shall be allowed to remain in the home while the underlying conduct is investigated. Consult with the consulting attorney if there is an immediate risk or threat to the health and safety of a child or nonminor dependent that may warrant an immediate exclusion action.

If, as a result of an arrest investigation, a reviewing agency obtains evidence demonstrating conduct that poses a potential risk to the health and safety of a child, contact the Resource Family and determine if the individual is still associated to the home. Conduct a legal consult and rescind the clearance or exemption. Additionally, rescind the Resource Family's approval if the individual continues to reside or is regularly present in the home.

RFA standards do not impact a placing agency's authority to make any placement decisions to ensure the health, safety, and well-being of the child or nonminor dependent, including situations in which the removal of a child or nonminor dependent is based in whole or in part on subsequent criminal history information.

#### b. Convictions

If the rap sheet includes a subsequent conviction, the reviewing agency must determine if immediate action is required while a criminal record exemption is evaluated. Unlike state licensed facilities, RFA approval agencies may not order the removal of an individual from the resource family/applicant's home pending a criminal record exemption decision. Thus, it is important to communicate with the resource family/applicant and the affected individual, to determine whether or not the individual will voluntarily move out of the home. If the individual remains in the home after a criminal record is denied, an administrative action against the application or approval of the resource family will be necessary.

If the conviction presents a risk of physical or emotional abuse, abandonment, or any other substantial threat to the health and safety of a child or nonminor dependent, an immediate exclusion action or temporary suspension order may be recommended to CDSS by the reviewing agency. Notify the Resource Family that the individual has been convicted of a crime affecting his or her clearance/exemption and determine if the individual will continue to reside or

be regularly present in the home. Schedule a legal consult to determine the appropriate administrative action.

If the individual is no longer associated to the home, conduct a legal consult and proceed with rescission of the clearance/exemption. At a legal consult, determine if an exclusion action for the record is appropriate, which will ensure that the individual does not have access to other resource family homes or licensed community care facilities. If the affected individual continues to reside or be regularly present in the home, a Notice of Action (NOA) rescinding approval may be necessary as recommended at the legal consult.

If an individual is actively associated to a Resource Family home and a subsequent rap sheet with convictions is received, follow the procedures below.

### **(1) Non-Exemptible or 5-year Ban Conviction – Resource Family**

If a member of the Resource Family has been convicted of a non-exemptible or 5-year ban crime (see section 112, *Non-Exemptible Crimes*), the approval must be rescinded.

- A. If it is decided that a Temporary Suspension Order is appropriate, prepare the Statement of Facts. Coordinate with the county liaison to ensure all required documents are sent to the assigned consulting attorney.
- B. If it is determined that the individual does not present a risk to children or other individuals, the reviewing agency may consider using an expedited rescission as discussed in paragraph (3) below and in section 125, *Administrative Actions*.
- C. Send the Resource Family and the individual separate Notices of Actions (NOA) informing them that the reviewing agency has received a subsequent rap sheet containing a non-exemptible or 5-year ban conviction and that the Resource Family approval has been rescinded. The letter to the affected individual must identify the documents or materials relied on to make the determination. In addition, the letter must list the conviction and, if known, the approximate date and court location where the conviction occurred.

### **(2) Non-Exemptible or 5-Year Ban Conviction – Associated Individual**

- A. Prior to sending a written notification, make a reasonable attempt to contact the Resource Family by telephone to inform him/her that the affected individual was convicted of a non-exemptible or 5-year ban crime and may no longer reside or be regularly present in a resource family home.
  - (A) If the affected individual will remain in the home, an administrative action against the RFA approval may be necessary. Conduct a legal consult to determine the appropriate action. Send separate Notices of Action (NOA) to the Resource Family and/or the affected individual. The NOA to the affected individual must identify the documents or materials relied on to make the determination.

### **(3) Exemptible Felony/Violent Misdemeanor – Resource Family**

*Subsequent to a clearance or subsequent to an exemption if a decision has been made not to rescind existing exemption*

- A. Decide, in consultation with the County Liaison, whether to issue a Temporary Suspension Order or wait while allowing the Resource Family to seek an exemption.
- B. Send separate and concurrent notices to the Resource Family and the individual specifying the administrative action as determined at Legal Consult. The notice to the individual must list his/her conviction(s).
- C. For felonies and misdemeanors that may require immediate exclusion, the reviewing agency, consulting attorney and county liaison will discuss and determine whether the case should be referred for a rescission or whether a decision on legal action should be postponed until the reviewing agency has processed the exemption request.
- D. If the conviction is for a nonviolent felony, the reviewing agency, consulting attorney and county liaison will discuss and determine whether the case should be referred for a rescission, or whether a decision on legal action should be postponed until the county reviewing agency has processed the exemption request. The reviewing agency, consulting attorney, and county liaison should consider whether the individual is likely to obtain an exemption when making their assessment.
- E. For any crime involving violence or a crime against children or dependent adults, the reviewing agency, the consulting attorney and county liaison may decide not to proceed with a Temporary Suspension Order (TSO). In these situations, if no immediate risk to children in out of home care is identified, it would be appropriate to pursue an expedited rescission (see Section 125, *Administrative Actions*).

If the decision is to seek rescission, the individual will be allowed to remain in the home pending action on the expedited rescission. In these cases, an exemption is not processed by the reviewing agency and the individual receives his/her appeal rights through the rescission process.

If the decision is to postpone action until a decision is made on the exemption, the individual will be allowed to remain in the home pending action on the exemption.

#### **(4) Exemptible Felony/Violent Misdemeanor – Associated Individual**

*Subsequent to a clearance or subsequent to an exemption if a decision has been made not to rescind existing exemption*

- A. Prior to sending a written notification, make a reasonable attempt to contact the Resource Family, informing the Resource Family that the individual was convicted of a felony/serious misdemeanor crime and may not reside or be regularly present in the home unless an exemption is granted.
- B. Send separate and concurrent notices to the Resource Family and the individual at his/her current home address specifying the above. The notice to the individual must list his/her conviction(s).
- C. Use the Legal Consult to determine if a Temporary Suspension Order is appropriate if the individual will continue to be associated to the home.

### **(5) Non-Violent Misdemeanor – Associated Individual**

If the conviction is for a crime that is not a felony and not a violent misdemeanor, send a letter to the resource family allowing the person to remain in the home, provided they request an exemption.

Concurrently, the affected individual must be sent a corresponding notice to his/her address on record informing him/her of the same. This letter must include a list of his/her conviction(s).

- A. If the Resource Family still wishes the individual to reside in the home, the affected individual or the Resource Family, in coordination with the affected individual, must request an exemption.

After receiving an exemption needed notice from the reviewing agency, if the Resource Family or affected individual chooses not to request an exemption and the individual no longer resides or is regularly present in the home, the affected individual has the right to request an exemption on his/her own behalf.

- B. The Resource Family or the individual may request an exemption by completing and returning the exemption needed notice, along with the items listed in the notice. An exemption request is not considered complete until all requested items listed in the notice have been submitted.
- C. If the exemption request is for a member of the Resource Family, and a complete exemption request is not submitted, the reviewing agency may deny the exemption.
- D. If the exemption request is for an associated individual other than a member of the Resource Family and a complete exemption request is not submitted, the reviewing agency may cease processing the exemption request and close the case.

## **124 APPEAL OF THE EXEMPTION DENIAL**

A Resource Family, applicant, or individual who has received a Notice of Action (denial or rescission of approval, exemption denial or rescission) and/or order of exclusion is accorded the right to a state hearing and other due process rights. The hearing forum, Office of Administrative Hearings (OAH) or State Hearings Division (SHD), will be determined at the mandatory legal consult prior to issuing the Notice of Action.

If a Respondent chooses to appeal an action for an application or exemption denial, he or she shall submit a written appeal to the County address listed in the Notice of Action within ninety (90) days from the date the notice was served on the respondent. If a Respondent chooses to appeal an action for an exemption rescission, exclusion order, or rescission of approval he or she shall submit a written appeal to the County or Department address listed in the Notice of Action or exclusion order within twenty-five (25) days from the date the notice was personally served on the respondent or within thirty (30) days if the notice was served on the respondent by mail. A Respondent may submit an appeal using an appeal form provided with the Notice of Action or exclusion order or may prepare his or her own written appeal. The reviewing agency shall notify the Department of Social Services in writing if it receives an appeal to a Notice of Action that included an order of exclusion.

If there are multiple actions included, the applicant, individual, or Resource Family may appeal in a single, unified appeal letter to the reviewing agency or Department, as applicable. The appeal must include the affected individual's mailing address and telephone number. If the reviewing agency or Department receives two such related appeals separately, the cases should be consolidated into a single, unified case with related case numbers (i.e., A case and B case). This will prevent any confusion regarding which Resource Family/applicant the exemption appeal is related to and will prevent conflicting outcomes.

A Resource Family or an applicant may appeal an exemption denial or rescission on behalf of the affected individual or an individual may appeal an exemption denial or rescission on his/her own behalf. If an individual is no longer residing or regularly present in the applicant or resource family home, he/she is afforded a separate hearing. If after an appeal is filed the exemption matter and related resource family approval matter proceeds to a hearing, the individual who is the subject of the exemption decision must waive their privacy rights regarding their criminal history in order to consolidate the matters into one hearing. Otherwise, separate hearings must be held. The Administrative Law Judge (ALJ) or attorney should address this issue at the prehearing conference.

NOTE: An individual is still associated to an applicant or Resource Family while an administrative action is pending. Do not send an NLI to DOJ until the time for appeal or set aside have lapsed or the case has been closed as applicable following a final decision and order.

### 125 ADMINISTRATIVE ACTIONS

An "administrative action" means an action or decision by the county or Department that triggers due process rights, namely, the right to receive an adequate notice that meets legal sufficiency requirements, the right to appeal, and the right to a hearing.

The following is a list of actions which may be considered by the reviewing agency based on the background assessment results. The type of action taken is determined at a legal consult and is based on the risk or threat posed by the conviction or conduct to the health and safety of a child or nonminor dependent in out-of-home care.

**1. Exemption Denial/Rescission** (see section 121, *Notification of the Exemption Decision*)

**2. RFA Application Denial**

If an applicant was convicted of a non-exemptible crime or denied an exemption for an exemptible crime, the RFA application shall be denied. The application may also be denied if the applicant has a CACI history of child abuse or severe neglect or engaged in other conduct posing a risk to the health and safety of a child or nonminor dependent or other individual.

**3. RFA Rescission**

For background check purposes, an approval may be rescinded when a resource family parent has an exemption denied or rescinded, or has engaged in prohibited conduct. An approval may also be rescinded if an adult that resides or is regularly present in the home has an exemption denied or rescinded or has engaged in prohibited conduct. The

rescission does not become effective until after a Notice of Action has been served and there is no appeal, after the action is affirmed in a final decision and order, or pursuant to a stipulation, waiver and order.

An expedited rescission is sought when a serious situation exists that does not constitute an immediate health or safety risk, but that requires quick action by the county. A worker should monitor the home closely while an expedited rescission is pending and continue to assess whether it is necessary to upgrade the action to a Temporary Suspension Order (TSO). The case summary in the Statement of Facts must clearly explain why an expedited rescission is requested, and that the case was discussed with the consulting attorney.

#### **4. Temporary Suspension Order (TSO)**

A Temporary Suspension Order (TSO) suspends the resource family approval prior to a hearing when urgent action is needed to protect a child from physical or mental abuse, abandonment, or any other substantial threat to health or safety. A TSO should result in the immediate removal of children or nonminor dependents in care.

The reviewing agency shall serve the resource family with the TSO with a notice of action, and if the matter is to be heard before the Office of Administrative Hearings, an accusation. The temporary suspension order shall list the effective date on the order.

#### **5. Exclusion**

An exclusion action against an individual must be taken by the Department and is generally taken only for the most serious conduct. If the reviewing agency is aware of the need for an RFA exclusion action, it must notify the Department as soon as it becomes aware. The purpose of the exclusion is to remove the individual from presence in any resource family home or from employment in, presence in, and contact with clients of any facility licensed by the department or certified by a licensed foster family agency, and from holding the position of member of the board of directors, executive director, or officer of the licensee of any facility licensed by the department. If the individual resides in a resource family home, then the approval must be rescinded and the rescission action should be joined with the exclusion action.

In rare situations the department may issue an exclusion order requiring the immediate removal of an individual when in the opinion of the department, the action is necessary to protect a child or nonminor dependent from physical or mental abuse, abandonment, or any other substantial threat to their health or safety. An immediate exclusion may be necessary if the individual is still living in the home and the placing agency is unable or unwilling to remove children in the home, and a TSO will not be effective to protect children in the home.

An "exclusion action" is to be distinguished from removal from the home pending a criminal record exemption decision. The fact that someone in the resource family home has been arrested or convicted of a crime does not authorize a reviewing agency to order the individual's removal from the home absent an exclusion order (see section 123, *Arrests and Convictions – Subsequent to Clearance or Exemption*). An exclusion order has a lifetime effect and is effective in Department licensed facilities as well as resource family homes, unless the individual successfully petitions the Department for reinstatement. In contrast, an exclusion from presence in any resource family home that

results from a denied or rescinded exemption only applies until the individual is granted an exemption.

Note: If the Department seeks to exclude an individual from a resource family home, an exclusion order shall be served with the Notice of Action.

### **126 RECORD RETENTION AND STORAGE**

The reviewing agency shall retain all records related to currently approved resource families. Records shall also be securely maintained for at least three years following the date of an application denial, rescission of approval, or surrender of approval. Documentation containing the reasons for granting, denying, or rescinding a criminal record exemption must be maintained, but RFA written directives do not specify a retention timeframe. Records shall be stored in a confidential section of the Resource Family file.

When a reviewing agency learns that an individual does not reside or is not regularly present in a resource family home, the subsequent arrest notification should remain active until there is a determination that the individual does not intend to return to the home. If the individual does not return to the home after a period of 1 year, the reviewing agency may determine that this is indicative the individual does not intend to return to the home and may send the No Longer Interested (NLI) to the Department of Justice (DOJ).

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### 127 RAP SHEET FREQUENTLY USED ABBREVIATIONS

A & B	Assault & Battery	CAC	California Administration Code
ACCESS	Accessory	CASE COMP	Case Compromised
ACCUS SET ASIDE	Accusation Set Aside	CC	Concurrent
ACHS	Automated Criminal History System	CCN	Court Case Number
AD	Advertise; Advertisement	CCW	Carry Concealed Weapon
ADLT	Adult	CCWPT	Concurrent With Present Term
ADMISS EVID INSUFF	Admissible Evidence Insufficient	CDC	California Department of Corrections
ADW or AWDW	Assault With Deadly Weapon	CDL	California Driver's License
ALC or ALCO	Alcohol	CDM	Contribute to the Delinquency of a Minor
AMMO	Ammunition	CDW	Carrying Dangerous Weapon
ANML	Animal	CERT JUV CRT	Certified To Juvenile Court
AP	Assessment Penalty	CERT SUP CRT	Certified To Superior Court
APP	Applicant	CHP	California Highway Patrol
ARR	Arrest	CII	Criminal Identification & Information Number
ARRESTEE EXON	Arrestee Exonerated	CJIS	Criminal Justice Information System
ASCERT EVID INSUFF	Ascertainable Evidence Insufficient	CLETS	California Law Enforcement Telecommunications System
ASLT	Assault	CMF	California Medical Facility
AT	Auto Theft	CNTL	Controlled
ATT	Attempt; Attempted	CNTRFEIT	Counterfeit
AWOL	Absent Without Official Leave	CNTS	Counts
B & P	Business & Professions Code	CO	County
B/F	Bail Bond Forfeited	COMB W/OTH CNTS	Combined With Other Counts
B/W	Bench Warrant	COM	Comment
BATT	Battery	COMM	Committed
BCII	Bureau of Criminal Identification and Information	COMP REFUSES TO PROS	Complainant Refuses to Prosecute
BECAM WIT F/PEO	Became Witness For People	CONREP	Conditional Release Program
BFMV	Burglary From Motor Vehicle	CONS	Consent; Consolidated
BLDG	Building	CONSP	Conspiracy
BUS	Business	CONT	Continue
C & R	Counseled & Released	CONV or "J"	Convicted
CA	City Attorney	COC	Contempt Of Court
CA/DMH	California Department of Mental Health	COP	Copulation

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CORI	Criminal Offender Record Information	DWD	Driving While Drunk
CORP	Corporate; Corporation	DWI	Driving While Intoxicated
CORP CODE	Corporation Code	DWOC	Drive Without Owner's Consent
CORP DELICTI	Corpus Delicti	DWOL	Drive Without License
CRC	California Rehabilitation Center	E/R	En Route
CRT	Court	EMER	Emergency
CRT PROB	Court Probation	EMP	Employee
CS	Consecutive	ENT	Enter; Entry
CTS	Credit Time Served	EOSS or EXEC SENT SUSP	Execution of Sentence Suspended
CVC	California Vehicle Code	EQUIP	Equipment
CWGB	Condition With Good Behavior	ESC	Escape; Escaped
DAMAGE TO PROP	Damage To Property	ESP	Espionage
DANG WPN or DW	Dangerous Weapon	ESTAB	Establish, Establishment
DA	District Attorney	ESTABLISH	Establishment
DEFT	Defendant	EXPLO	Explosive
DEG	Degree	EXT	Extortion
DEL	Delinquent	F/ARM	Firearm
DEP	Deportation	FAC	Facility
DEPT. 95	Psycho	FBI	Federal Bureau of Investigation
DET	Detention	FCI	Federal Correctional Institute
DIS	Disrupt; Disorderly	FED	Federal
DISCHRG or DISCH	Discharge; Discharged	FEL	Felon; Felony
DISCL	Disclose	FG	Fish & Game Code
DISM	Dismissed	FLS	False
DISORD	Disorderly	FN	Fine
DIST	Distribute; Distribution	FN PD	Fine Paid
DIV	Diversion	FND NOT GUILTY	Found Not Guilty
D.L.	Driver's License	FOJ or FURTH OF JUST	Furtherance Of Justice
DLR	Dealer	FTA	Failure To Appear
DMV	Department Of Motor Vehicles	FTPF	Failure To Pay Fine
DOB	Date Of Birth	FUG	Fugitive
DOC	Document	FURTH INVEST	Further Investigation
DOJ	Department of Justice	GBI	Great Bodily Injury
DP	Disturbing The Peace	GJI	Grand Jury Indictment
DRK	Drunk	GL	Grand Larceny
DS	Day(s)	GMS	Grams
DSP	Disposition Record Number	GOVT	Government
DTH	Death	GP	Guilty Plea
DUI	Driving Under the Influence Alcohol/Drugs	GT	Grand Theft

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GTA	Grand Theft Auto	JUDG & SENT SUSP	Judgment & Sentence Suspended
H & R	Hit & Run	JUDG ARR DEFT DISCH	Judgment Arrested Defendant Discharged
HAB	Habitual	JUDG SUSP or J/S	Judgment Suspended
HAZ	Hazard; Hazardous	JUDL	Judicial
HNT	Hunt	JUV	Juvenile
HS or H & S	Health & Safety Code	L & L	Lewd & Lascivious
HTA	Held To Answer	LACK OF EVID	Lack Of Evidence
HWY	Highway	LACK OF CORP	Lack Of Corpus
HYPO	Hypodermic	LACK OF PROB CAUSE	Lack Of Probable Cause
ID	Identification	LACK OF PROS or LOP	Lack Of Prosecution
IDN	Identification Number	LEG or LEGIS	Legislative; Legislature
IE or INSUFF EVID	Insufficient Evidence	LIC	License
ILL SEARCH & SEIZ	Illegal Search & Seizure	LIO	Lesser Included Offense
IMM	Immigration	LIQ	Liquor
IMP SENT SUSP or ISS	Imposition of Sentence Suspended	LVE	Leave
INADMISS SEARCH & SEIZ	Inadmissible Search & Seizure	MAL	Malicious
INFLU	Influence	MANSL	Manslaughter
INFO	Information	MARIJ	Marijuana
INFO PROB or INFORM	Informal Probation	MAT	Material
INFO SET ASIDE	Information Set Aside	MC	Municipal Code
INJ	Injury; Injure	MCW	Municipal Court Warrant
INN	Institution Number	MDSO	Mentally Disordered Sex Offender
INSUFF CAUSE	Insufficient Cause	MFG	Manufacturing
INSUFF EVID W/CODEFT	Insufficient Evidence For Co- Defendant	MISD	Misdemeanor
INT	Interest	MNI	Master Name Index
INT OF JUST	Interest Of Justice	MNR	Minor
IOE	Insufficient Of Evidence	MNU	Miscellaneous Numbers
IRA	Internal Revenue Act	MOD	Modified
IRO	Included Reduced Offense	MOS	Months
ISS	Issued	MOT OF CRT	Motion Of Court
JD#	Judicial District Number	MOT OF DA	Motion Of District Attorney
JDG	Judgment	MOT OF DDA	Motion Of Deputy District Attorney
JL	Jail	MOT OF PEO	Motion Of People

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MTR	Motor	PET	Petition
NARC	Narcotics	PET REQ	Petition Requested
NBR	Number	PFC	Prior Felony Conviction
NC	No Charge	PG	Pled Guilty
NCF	No Charge Filed	PH	Phone
NCIC	National Crime Information Center	PL	Petty Larceny
NDL	Needle	PLEA BARG	Plea Bargain
NEG	Negligence	PLEA TO OTH CHG	Plea To Other Charge
NEGO PLEA	Negotiated Plea	PNC	Pled Nolo Contendre
NFA	National Firearms Act	PO	Peace Officer
NFS	No Filing Sought	POSS	Possess
NLETS	National Law Enforcement Telecommunication System	PR	Prior
NMVTA	National Motor Vehicle Theft Act	PREM	Premises
NO EVID BY PEO	No Evidence By People	PRESCRIP	Prescription
NO FURTH INFO	No Further Information	PROB	Probation
NO JUD COM	No Judicial Comment	PROB EXT	Probation Extended
NTCU	Narcotic Treatment Control Unit	PROB MOD	Probation Modified
O/R	Own Recognizance	PROB REINST	Probation Reinstated
OAWDL	Operate Auto Without Driver's License	PROB REVKD	Probation Revoked
OBJ	Object	PROB TERM	Probation Terminated
OBT	Obtaining	PROB TRANS	Probation Transferred
OFCL	Official	PROB VIO	Probation Violated
OFCR	Officer	PROC SUSP or PROC SS	Proceedings Suspended
OFF	Offense	PROG	Program
OFN	Offender	PRON JUDG SUSP	Pronouncement Judgment Suspended
OHV	Off-Highway Vehicle	PRON JUDG W/HELD	Pronouncement Judgment Withheld
OL	Operator's License	PROS	Prosecute
OLN	Operator's License Number	PROC	Procedure
OPR	Operate; Operation	PROP	Property
ORD	Ordinance	PRSN	Person
OTC	Out To Court	PRSNL	Personnel
P/J	Penalty Of Judgment Withheld	PRV	Private
PA	Penalty Assessment	PT	Petty Theft
PAND	Pandering	PUB	Public
PAR	Parole	R.N.	Registered Nurse
PASS	Passenger	RAP	Record of Arrest and Prosecution
PC	Penal Code	RECOMM	Recommitted
PD	Paid; Police Department	RED	Reduced
PDR	Personal Data Record	REF	Refuse; Referred

## RESOURCE FAMILY APPROVAL: BACKGROUND ASSESSMENT GUIDE

REG	Register; Registration	SURV	Survey
REJ	Rejected	SYR	Syringe
REL	Released	T & C	Terms & Conditions
REM	Remain	TAWOC	Takes Auto Without Consent
REP	Represent; Representation	TERM	Terminated
REQ	Required	TFT	To Finish Term
RESTN or RSTN	Restitution	TK	Take
REVKD	Revoked	TPL	Termed Prescribed By Law
REWRD	Reward	TRAN	Transit
RIFL	Rifle	TRANSF	Transfer
RMV	Remove	TRANSP	Transport; Transportation
RPT	Report	TT	Total Term; Total Fixed Term
RR	Railroad; Reduced Related Charge	UC	University Of California
RSP	Receiving Stolen Property	UNAUTH	Unauthorized
RTFT	Returned to Finish Term	UNEMPLOY	Unemployment
SAB	Sabotage	UNIV	University
SBI	Serious Bodily Injury	UNLAW	Unlawful
SCH	School	UNOCC	Unoccupied
SEC	Second	VC	Vehicle Code
SENT or SEN	Sentence	VCIN	Violent Crime Information Network
SENT SUSP or SS	Sentence Suspended	VD	Venereal Disease
SID	State Identification Number	VEH	Vehicle
SIG	Signal	VES	Vessel
SIS	Sentence Imposes Suspended	VICT	Victim
SN or SSN or SOC	Social Security Number	VIOL	Violation; Violate
SP or ST PRIS	State Prison	VOLT	Voltage
SPEC CIRC	Specific Circumstances	W/	With
SP SS	State Prison Term Suspended	W/O	Without
SSA	Selective Service Act	W/PR	With Prior
ST	Street	WIT	Witness
STIP PROB CAUSE	Stipulation Probable Cause	WPN	Weapon
STLN	Stolen	WST	Waste
STU	Student	XIMP	(X =computer generated) Imposition of Sentence Suspended
SUB	Substance	YR(S)	Year(s)
SPEC	Specific	1118 PC	Acquittal, Non-Jury Case
ST HOSP	State Hospital	1538.5 PC	Dismissed Per Motion
STRU	Short Term Return Unit		

## RESOURCE FAMILY APPROVAL: BACKGROUND ASSESSMENT GUIDE

### 128 RAP SHEET FREQUENTLY USED AGENCY IDENTIFIERS

AD	Arson Division/Department/District	IS	Immigration & Naturalization Service
AF	Air Force	JC	Justice Court
AL	Alien Registration	JD	Juvenile Detention
AP	Airport Authority/Police	JV	Juvenile Court
AR	Army	MA	Marine Corps
AT	U.S. Dept of Alcohol, Tobacco & Firearms	MC	Municipal Court
BN	Federal Bureau of Narcotics	ME	Medical Examiner
CA	City Attorney	MF	Medical Facility
CB	County Board/Commission/Department	MG	Magistrate
CC	City Board/Commission/Department	MJ	Municipal/City Jail
CD	Count Detention Bureau	MR	Marshall
CE	Consulate/Embassy	MS	Military Stockade
CG	Coast Guard	NA	Navy
CI	Correctional Institution	NF	Nuclear Facility
CJ	County Jail	NP	National Park
CL	State College	NT	Narcotic Task Force
CM	Community College	PA	Parole
CN	County Penitentiary	PD	Police Department
CO	Coroner	PF	Private Facility
CP	County Police	PK	Park District
CR	County Clerk/Recorder	PM	Provost Marshall
CS	Custom Station	PO	Proprietary Security Organization
CT	Contractor	PP	Public Prosecutor
CU	Court Unknown	PR	Probation Department
DA	District Attorney	PS	Department of Public Safety
DB	Disciplinary Barracks	PT	Port/Harbor
DC	District Court	PU	Public Facility
DD	Department of Defense	PV	Private School
DE	Drug Enforcement Unit/Administration	RA	Reporting Agency
DJ	Department of Justice	RC	Rehabilitation Center
FA	Federal Appeal Court	RE	Reformatory
FB	Federal Bureau of Investigation	RR	Railroad
FC	Federal Board/Commission/Dept/Agency	SA	State Court of Appeal
FD	Federal District Court	SB	State Board
FF	Fire Department	SC	Superior Court
FI	Financial Institution	SD	State Department
FM	Fire Marshall	SE	Secret Service
FP	Federal Prison	SF	State Farm
FS	Federal Supreme Court	SG	State Agency
GW	Game Warden	SJ	State Jail
HC	House of Corrections	SM	State Commission
HO	Hospital	SO	Sheriff's Office
HP	Highway Patrol	SP	State Prison
HR	Human Resources	SS	State Supreme Court

## RESOURCE FAMILY APPROVAL: BACKGROUND ASSESSMENT GUIDE

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ST	State Police	TF	Task Force
SU	State University	USD	Unified School District
SW	Social Welfare	YA	Youth Authority
TD	Transit District	YO	Youth Organization

## APPENDIX

### Emergency Placement

When a child has been taken into custody, or when the sudden unavailability of a foster caregiver requires a change in placement for a dependent child, a relative/NREFM may request temporary (i.e., emergency) placement of the child. The County has the discretion to place the child with that relative/NREFM prior to approval as a resource family in accordance with Welfare and Institutions Code sections 309, 361.4, and 361.45, as follows:

- 1) Conduct California Law Enforcement Telecommunications System (CLETS) and child abuse checks.
  - If the CLETS information indicates that the person has been convicted of an exemptible crime under Section 1522 of the Health and Safety Code, the child may be placed in the home on an emergency basis only after the placement has been approved by the deputy director or director of the county welfare or probation department or his or her designee.
  - **If the CLETS information indicates that the person has been convicted of a non-exemptible crime under Section 1522 of the Health and Safety Code, the child shall not be placed in the home on an emergency basis.**
- 2) Placement of a child is made on an emergency basis.
  - A live scan fingerprint check shall be conducted within 5 **business** days following an emergency placement or within 10 calendar days of the CLETS check, whichever occurs sooner, on all adults subject to RFA background check requirements.
- 3) The live scan fingerprint check triggers the RFA process. When fingerprints are submitted under the Authorized Applicant Type: RESRCE FAM PER 16519 WI on the BCIA 8016 *Request for Live Scan Service* form, the individual is submitting his or her fingerprints as an applicant for Resource Family Approval (RFA).
- 4) The County making the emergency placement shall provide the caregiver with the RFA 01A *RFA Application*. The County completing the RFA process shall arrange to receive this application from the applicant within 5 business days of placement **or within 10 calendar days of the CLETS check, whichever occurs sooner**, pursuant to RFA Written Directives (WDs) section **4-08**.
- 5) If the results of the live scan fingerprint check (i.e., CORI or rap sheet) reveal any conviction(s) for an exemptible crime(s) (individuals with a non-exemptible conviction are ineligible for an exemption) the exemption process should be initiated as soon as possible. Simplified exemptions are granted based solely on the information contained in the rap sheet and self-disclosure form, while standard exemptions require the individual to request an exemption in response to an “exemption needed” notification.
  - The standard exemption process is required to evaluate whether the county may approve an exemption based on substantial and convincing evidence that the individual is of present good character and to provide adequate due process if the requested exemption has been denied.

- 6) An exemption decision letter (i.e., approval or denial/NOA) must be sent to the individual. Exemption denial letters (RFA 09B) must list the criminal conviction(s) upon which the denial is based. If an exemption denial will result in a RFA application denial, a NOA for application denial (RFA 09) must also be sent to the applicant.

➤ **If No Emergency Placement is Made**

- 1) If no placement has been made on an emergency basis, the County must be in receipt of the RFA 01A *RFA Application* prior to requiring that an individual submit to the live scan fingerprint check.
  - Any individual who has submitted to the live scan fingerprint check is entitled to due process, including *written* notification of the results (i.e. notice of exemption needed letter or non-exemptible conviction notification, if applicable), a copy of his or her rap sheet, and the right to request an exemption.
- 2) If the results of the live scan fingerprint check (i.e. CORI or rap sheet) reveals any conviction(s) for an exemptible crime(s) (individuals with a non-exemptible conviction are ineligible for an exemption), the exemption process should be initiated as soon as possible. Simplified exemptions are granted based solely on the information contained in the rap sheet and self-disclosure form, while standard exemptions require the individual to request an exemption in response to an “exemption needed” notification.
  - The standard exemption process is required to evaluate whether the county may approve an exemption based on substantial and convincing evidence that the individual is of present good character and to provide adequate due process if the requested exemption has been denied.
  - An exemption decision letter (i.e., approval or denial/NOA) must be sent to the individual. Exemption denial letters (RFA 09B) must list the criminal conviction(s) upon which the denial is based. If an exemption denial will result in a RFA application denial, a NOA for application denial (RFA 09) must also be sent to the applicant.
  - A county may not close an individual’s file, or require that an applicant withdraw their RFA application, without affording them their due process rights, namely, written notice of any adverse action and of the right to appeal the denial of a criminal record exemption and/or RFA application.
- 3) If the results of the live scan fingerprint check (i.e. CORI or rap sheet) reveal any convictions for a non-exemptible crime, a NOA for exemption denial (RFA 09B) must be sent to the individual identifying the relevant non-exemptible conviction(s) along with a copy of the full rap sheet received from DOJ. If the exemption denial will result in an RFA application denial, a NOA for application denial (RFA 09) must also be sent to the applicant, but should not include details of the individual’s criminal history.
  - A county may not close an individual’s file, or require that an applicant withdraw their RFA application, without affording them their due process rights, namely, written notice of any adverse action and of the right to appeal the denial of a criminal record exemption and/or RFA application.

**NOTE: Placement does not guarantee approval as a resource family.**

**Certified Arrest Records Request Template**

[County Letterhead Here]

[Date]

[Enter county sheriff or local police agency name]

VIA FACSIMILE

ATTN: RECORDS DIVISION

FAX #: ( )

**REQUEST FOR CERTIFIED COPIES OF CRIME REPORTS**

Dear Custodian of Records:

I am a [enter job title] with the [enter county and RFA unit name], and I am requesting certified copies of arrest, incident, or investigation reports, including any supplemental reports, regarding the individual named below. Welfare and Institutions Code (W&IC) section 16519.5(d) mandates the County to conduct criminal background reviews of individuals who apply for Resource Family Approval (California's new unified foster care and adoption approval program) and of individuals who reside in or are present in a Resource Family home. Authority for the counties to obtain law enforcement records in the performance of their duties is outlined in W&IC section 16519.5(s) and Health and Safety Code section 1522(e).

Report Number(s):

Suspect Name:

D.O.B.:

Crime(s):

Please provide ALL certified reports on file for this individual, including supplemental reports and copies of photos, even if the report is not specifically listed above. "Certification" means stamp or seal on letterhead stating that the records are true and correct copies of reports on file. A certification form is enclosed for your convenience.

Please mail the **certified** arrest records to me at the following address:

ATTN:

Thank you. If the above requested report(s) cannot be provided, or if you have any questions, you may call me at: xxx-xxx-xxxx.

Sincerely,

[Name, Title]

**DECLARATION OF CUSTODIAN OF RECORDS**

I, \_\_\_\_\_, declare:  
(Print name)

1. I am a Custodian of Records for \_\_\_\_\_.  
(Name of Law Enforcement Agency)

2. The attached document(s) identified as:

---

(e.g., crime reports, incident report, pleas, arrest disposition, etc.)

and consisting of \_\_\_\_\_ page(s), is a true and correct copy of the original on file in this office.

3. The documents are provided to the California Department of Social Services for use in an administrative action under the California Health and Safety Code.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed on \_\_\_\_\_, at \_\_\_\_\_.  
(Date) (City, State)

---

(Signature)  
**Custodian of Records**

OFFICIAL STAMP/SEAL

**Certified Court Records Request Template**

[County Letterhead Here]

[DATE]

[COURT NAME HERE] SUPERIOR COURT  
ATTN: RECORDS  
FAX #:

VIA FACSIMILE

**REQUEST FOR CERTIFIED COPIES OF COURT RECORDS**

Dear Custodian of Records:

I am a [enter job title here] with the [enter county name and RFA unit name here], and I am requesting certified copies of the below judgment of conviction, court docket, complaint, minute orders, and sentencing records regarding the individual named below. ***If the original court records have been purged, please provide a certified copy of the electronic docket, screen printout, or any record showing the case disposition.*** Authority to obtain these documents is found in Welfare and Institutions Code section 16519.5(d) and (s) and Health and Safety Code section 1522(e), which mandate the County to conduct criminal background reviews and authorizes counties to obtain court records of individuals who apply for Resource Family Approval (formerly known as “foster care”) or individuals who reside in or are present in a Resource Family home.

**Case Number(s):**

**Individual’s Name:**

**DOB:**

**Conviction Information:**

Please mail the **certified** court documents to me at the following address:

ATTN:

Thank you. If the above requested information cannot be located or if you have any questions, you may call me at ( )

Sincerely,

[Name, Title]

**DECLARATION OF CUSTODIAN OF RECORDS**

I, \_\_\_\_\_, declare:  
(Print name)

1. I am a Custodian of Records for \_\_\_\_\_.  
(Court)
2. The attached document(s) identified as:

---

and consisting of \_\_\_\_\_ page(s), is a true and correct copy of the original on file in this office.

3. The documents are provided to [insert county name] in relation to a criminal background check assessment as required by Welfare and Institutions Code section 16519.5.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed on \_\_\_\_\_, at \_\_\_\_\_.  
(Date) (City, State)

---

(Signature)  
**Custodian of Records**

OFFICIAL STAMP/SEAL

**Certified CDCR 969(b) Packet Request Template**

[County Letterhead Here]

[DATE]

California Department of Corrections and Rehabilitation  
ATTN: 969b UNIT, CUSTODIAN OF RECORDS  
1515 Street, Sacramento, CA 95811  
FAX #: (916)

VIA FACSIMILE

**REQUEST FOR CERTIFIED COPIES OF 969(b) Packet**

Dear Custodian of Records:

I am a [enter job title here] with the [enter county name and RFA unit name here], and I am requesting certified copies of the 969(b) PIN packet for the individual named below. Legal authority to obtain these documents is found in Welfare and Institutions Code section 16519.5(d) and (s) and Health and Safety Code section 1522(e), which mandate the County to conduct criminal background reviews of individuals who apply for Resource Family Approval (formerly known as “foster care”) or individuals who reside in or are present in a Resource Family home.

CDCR Number:  
Inmate Name:  
D.O.B.:  
Conviction Information reported to DOJ:

Comments: Please provide ALL certified 969b records on file for this individual. A certification form is attached for your convenience if you do not have your own seal, stamp, or certification form.

Please mail the **certified** documents to me at the following address:

ATTN:

Thank you. If the above requested information cannot be located or if you have any questions, you may call me at ( )

Sincerely,

[Name, Title]

**DECLARATION OF CUSTODIAN OF RECORDS**

I, \_\_\_\_\_, declare:  
(Print name)

1. I am a Custodian of Records for \_\_\_\_\_.  
(Employer)
2. The attached document(s) identified as:

---

and consisting of \_\_\_\_\_ page(s), is a true and correct copy of the original on file in this office.

3. The documents are provided to [insert county name] in relation to a criminal background check assessment as required by Welfare and Institutions Code section 16519.5.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed on \_\_\_\_\_, at \_\_\_\_\_.  
(Date) (City, State)

---

(Signature)  
**Custodian of Records**



**Exemption Needed Notification Template**

<Date> Resource Family: <Name>  
Background Check Worker: <Name>  
<Name>  
<Address>

**EXEMPTION NEEDED NOTIFICATION**

Criminal Record Exemption Needed for <insert subject name>

This notice is to inform you that <insert County Name or Department/Division> has received criminal record information concerning you. **You cannot reside or be regularly present in a resource family’s home until a criminal record exemption has been granted.** Pursuant to state law, an exemption may be granted if the county is in receipt of substantial and convincing evidence of present good character and rehabilitation. If you are someone other than the resource family or applicant, a separate notice (excluding your criminal record) has been sent to the resource family or applicant notifying them of the need for a criminal record exemption.

If you intend to reside or be regularly present in a resource family’s home, you may request an exemption in coordination with the resource family or applicant. If you intend to disassociate yourself from the resource family, you have the right to request an exemption on your own behalf.

To request an exemption, the documents listed on page three **must** be submitted **within forty-five (45) calendar days** from the date of this notice. An exemption can take approximately seventy-five (75) days to process after a **complete** exemption request is received by <insert County Name or Department/Division>. Please provide your response by completing and returning the attached Action Request Form along with your exemption request to:

<County or Department/Division>  
<Address>  
<Address>  
<Attn:>

Your exemption request must be received no later than: <insert DATE>

*If the items listed below are not submitted within forty-five (45) calendar days of the date of this notice, your exemption may be denied. If you are denied an exemption, further action may be taken, including an application denial or rescission of the resource family’s approval.*

A copy of your Criminal Offender Record Information (CORI) received from the Department of Justice (DOJ) and/or the Federal Bureau of Investigation (FBI) is attached to this letter. The conviction(s) for which you must request an exemption have been highlighted.

If you have any questions regarding this notice, please contact your Background Check Worker at: <xxx-xxx-xxxx>.

If the items listed below are not submitted **within forty-five (45) calendar days** from the date of this notice, your **exemption may be denied**. If an exemption is denied, you will not be eligible to request an exemption until two years have lapsed.

1. A detailed description of the individual's role as it applies to the resource family or applicant. If you no longer reside or are regularly present in the resource family's or applicant's home, include any plans to return to the home if an exemption is granted.
2. A signed Exemption Needed letter indicating that an exemption is being requested, returned from the applicant or Resource Family on behalf of the individual or the individual on his/her own behalf.
3. A signed copy of the mandatory Resource Family Criminal Record Statement (RFA 01B).
4. A signed statement describing any and all convictions within or outside the state, including approximate dates, what happened, how and where it happened, and any other information about the crime(s). The statement must describe what the individual has done since the conviction to ensure he or she will not be involved in any criminal activity again. The individual need not disclose any marijuana-related offenses covered by the marijuana reform legislation codified at Health and Safety Code sections 11361.5 and 11361.7 or any conviction related to human trafficking for which relief has been granted pursuant to Penal Code section 1203.49.
5. Documentation relevant to the conviction listed as the basis for the exemption including but not limited to: Minute Order, court record, court docket or transcript, law enforcement records, and letters from the Probation Department or California Department of Corrections and Rehabilitation (CDCR), as applicable.
6. Verification of trainings, classes, courses, treatment, counseling, or other documentation relevant to rehabilitation.
7. Three (3) signed character reference statements, including the telephone number and address where he or she can be contacted. Character references must be current. The LIC 301E may be used as a guide to ensure the relevant information is captured by the person providing the reference. An individual listed as a reference on a Resource Family Application form (RFA 01A) may be the same individual providing a character reference for a criminal record exemption request.

The <County/Department/Division> may compare the individual's statement with the RFA 01B, police reports, court documents, and any other documents obtained by the <insert County/Department/Division>.

**ACTION REQUEST (CHECK ONLY ONE)**

- YES** I am no longer residing or regularly present in the resource family's or applicant's home, but I will be requesting an exemption. The documents listed above are attached.
  
- YES** I am either the resource family or applicant or I will continue to reside or be regularly present in the resource family's or applicant's home. I will be requesting an exemption on my own or in coordination with the resource family or applicant. The documents listed above are attached.
  
- NO** I am no longer residing or regularly present in the resource family's or applicant's home and will not be requesting an exemption.

Please keep a copy of this letter.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

(\_\_\_\_\_)\_\_\_\_\_  
Telephone Number

**Subsequent Conviction Notification Template**

<Date> Resource Family: <Name>  
Background Check Worker: <Name>

<Name>  
<Address>

**SUBSEQUENT CONVICTION NOTIFICATION**

Criminal Record Exemption Needed for <insert subject name>

This notice is to inform you that <insert County Name or Department/Division> has received additional or subsequent criminal record information concerning you. **Your existing criminal record clearance or exemption will be re-evaluated and you must request an exemption for the additional or subsequent conviction(s).** If you are someone other than the Resource Family or applicant, a separate notice (excluding your criminal record) has been sent to the resource family or applicant, notifying them of the need for a criminal record exemption for the additional or subsequent conviction(s).

You may continue to reside or be regularly present in a resource family's home while the exemption request is evaluated. You may request an exemption in coordination with the resource family. If you intend to disassociate yourself from the resource family, you have the right to request an exemption on your own behalf.

To request an exemption, the documents listed on page three **must** be submitted **within forty-five (45) calendar days** from the date of this notice. An exemption can take approximately seventy-five (75) days to process after a **complete** exemption request is received by <insert County Name or Department/Division>. Please provide your response by completing and returning the attached Action Request Form along with your exemption request to:

<County or Department/Division>  
<Address>  
<Address>  
<Attn:>

Your exemption request must be received no later than: <insert DATE>

*If the items listed below are not submitted within forty-five (45) calendar days from the date of this notice, your exemption may be denied. If you are denied an exemption, further action may be taken, including rescission of the resource family's approval.*

A copy of your Criminal Offender Record Information (CORI) received from the California Department of Justice (DOJ) and/or the Federal Bureau of Investigation (FBI) is attached to this letter. The conviction(s) for which you must request an exemption have been highlighted.

If you have any questions regarding this notice, please contact your Background Check Worker at: <xxx-xxx-xxxx>.

If the items listed below are not submitted **within forty-five (45) calendar days** from the date of this notice, your **exemption may be denied**. If an exemption is denied or an existing exemption or approval is rescinded, you will not be eligible to request an exemption until two years have lapsed.

1. A signed Subsequent Conviction Notification letter indicating that an exemption is being requested, returned from the Resource Family on behalf of the individual or the individual on his/her own behalf.
2. A signed statement describing any and all convictions within or outside the state, including approximate dates, what happened, how and where it happened, and any other information about the crime(s). The statement must describe what the individual has done since the conviction to ensure he or she will not be involved in any criminal activity again. The individual need not disclose any marijuana-related offenses covered by the marijuana reform legislation codified at Health and Safety Code sections 11361.5 and 11361.7 or any conviction related to human trafficking for which relief has been granted pursuant to Penal Code section 1203.49.
3. Documentation relevant to the conviction listed as the basis for the exemption including but not limited to: Minute Order, court record, court docket or transcript, law enforcement records, and letters from the Probation Department or California Department of Corrections and Rehabilitation (CDCR), as applicable.
4. Verification of trainings, classes, courses, treatment, counseling, or other documentation relevant to rehabilitation.
5. Three (3) signed character reference statements, including the telephone number and address where he or she can be contacted. Character references must be current. The LIC 301E may be used as a guide to ensure the relevant information is captured by the person providing the reference. An individual listed as a reference on a Resource Family Application form (RFA 01A) may be the same individual providing a character reference for a criminal record exemption request.

The <County/Department/Division> may compare the individual's statement with the RFA 01B, police reports, court documents, and any other documents obtained by the <insert County/Department/Division>.

**ACTION REQUEST (CHECK ONLY ONE)**

- YES** I am no longer residing or regularly present in the resource family's home, but I will be requesting an exemption. The documents listed above are attached.
  
- YES** I am either the resource family or I will continue to reside or be regularly present in the resource family's home. I will be requesting an exemption on my own or in coordination with the resource family. The documents listed above are attached.
  
- NO** I am no longer residing or regularly present in the resource family's home and will not be requesting an exemption.

Please keep a copy of this letter.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

(\_\_\_\_\_)\_\_\_\_\_  
Telephone Number