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## **Exemptions for Criminal History Records**

**0100-520.70 | Revision Date: 07/01/14**

### **Overview**

**This policy reviews the process for granting exemptions on a case-by-case basis where the conviction at hand does not pose a risk to the child.**

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## Version Summary

This policy guide was updated from the 11/15/13 version, as part of the Policy Redesign, in accordance with the DCFS Strategic Plan. The title of the policy guide has been changed from "Exemptions for Relative, Non-Relative Extended Family Members, and Prospective Guardians with Criminal History Records".

# POLICY

## Consideration of Relatives

Relatives must be considered first for all children who are in need of out-of-home care placement services. At the time a child is taken into temporary custody, the CSW will ask the children and parents if there are willing relatives and/or non-relative extended family members (NREFMs) that can be considered as a placement resource. Every effort must be made, where possible, to place these children with willing, able, and appropriate relatives and to avoid temporary placement in non-related foster care.

Prior to placing a child in the home of a prospective caregiver:

- A criminal record exemption request must be made and granted for every person in the home who has been convicted of a crime. The exemption will be issued based upon substantial and convincing evidence that:
  - A person is of good character, which justifies the child's placement the home.
  - The placement does not pose a risk of harm to the child.
- A WIC 361.4 request must be made and granted.

Criminal history, background checks, as well as other provisions of Assembly Bill (AB) 2651 are required, by law, of all the following individuals:

- Prospective foster parents
- Certified parents
- Prospective adoptive parents

- Relatives who are licensed or approved for placement on or after October 1, 2008
- Adults residing or providing care in Foster Family Agencies, Foster Family Houses, Certified Family Homes, and relative and NREFM homes.

AB 2651 does not apply to caregivers who were granted licenses or approvals before October 1, 2008. Existing care providers who move will not be affected by these amendments. However, if one (1) of the above individuals is subsequently convicted of a federal non-exemptible crime or a federal five (5) year ban crime, his/her license, certification, or exemption must be revoked.

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## Temporary Placement of a Child in a Prospective Caregiver's Home

A child may be temporarily placed in the home of a prospective caregiver until the completion of the disposition hearing. In addition, a child may also be temporarily placed in the home of a willing and able relative or non-relative extended family member when an emergency occurs as a result of the current caregiver's home suddenly becoming unavailable any time after the disposition hearing takes place.

This placement may occur if a prospective caregiver, any other adult residing in the home, and any persons having significant contact with the child meet both of the following criteria:

- California Law Enforcement Telecommunications System (CLETS) results show no convictions other than minor traffic violations.
  - If the CLETS results indicate any convictions other than a minor traffic violation, the child must not be temporarily placed in that home.
  - A child may be temporarily placed in the home even if, pending the receipt of the information from the other state(s), an individual has resided in another state in the past five (5) years.
- The CWS/CMS search of their prior child welfare services and their [Child Abuse Central Index \(CACI\)](#) results have determined that they do not to pose a risk to the child. In addition, they have met all the requirements outlined in [Evaluating a Prospective Caregiver](#).

An exemption can only be requested based on the results of a [Live-Scan clearance](#). A request for an exemption based on [California Law Enforcement Telecommunications System \(CLETS\)](#) is not permitted.

## **Juvenile Offenders**

**A juvenile conviction need only be exempted, if possible, if there was a California Youth Authority (CYA) commitment associated with the crime. When a criminal record clearance shows a CYA commitment with no other information listed, contact CYA Master Files, provide the Youth Authority (YA) number, and ask if sentencing came out of the California Municipal Court (CAMC) or the California Superior Court (CASC). If the criminal record clearance came out of the California Juvenile Court (CAJV), the conviction came out of juvenile court, does not have to be exempted, and needs a county clearance. Multiple CAJV convictions may be used to show a pattern of criminal conduct. Most of the time a juvenile conviction out of an adult court is not exemptible and is usually a serious crime (e.g. murder, sex offenses).**

## **Placements Involving an Indian Tribe**

**If an Indian tribe is involved in the child's placement, and if the home of a relative or non-relative extended family member (NREFM) has not been approved, the CSW will obtain the required criminal records clearances. An Indian tribe may requests an exemption to a criminal background check based on either:**

- **The criminal history record of any one (1) of the adults residing in the home**
- **Any other adult having significant contact with the child.**

**In such a case, the Indian tribe may have the county with jurisdiction over the child or the State Department of Social Services (CDSS) evaluate the exemption request. Once the tribe elects for this, the exemption decision may only be made by that reviewing agency. If the Indian tribe decides to have the county review and approve the exemption request, follow the procedures outlined in this policy guide.**

## **Denial of an Exemption**

**When a determination is made to deny a request for an exemption, a [Denial of Exemption of Criminal Record Notice](#) must be sent to the requesting individual. It must include sufficient detail to allow him/her to make an informed decision on whether to file a grievance. This notice must include the specific terms of the denial and sufficient detail regarding how the individual did not meet the exemption standards.**

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# **PROCEDURE**

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## **Reviewing the Criminal Records Clearance Documents**

## CSW Responsibilities

1. Review the [Non-Exemptible Crime List](#).
  - Under no circumstances must a child be allowed to remain in the home or will an exemption be granted, in order for the home to be approved, if the prospective caregiver or anyone residing in their home has been convicted of any of the crimes listed.

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## Requesting a Criminal Records Exemption

### Case-Carrying CSW Responsibilities

1. If the conditions below apply:
  - A relative, non-relative extended family member (NREFM), other adult in the home, or an adult having significant contact with the child has a criminal history record other than minor traffic violations reflected on the Live-Scan, and
  - You and the SCSW still want to place the child in the home or allow the child to remain in the home
2. The following five (5) factors must be documented on the [DCFS 5602](#), WIC 361.4 Exemption Request:
  - Nature of the crime(s);
  - Period of time since the crime(s) was committed and number of offenses;
  - Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition;
  - Life activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior; and
  - Evidence of honesty and truthfulness as revealed in exemption application documents (example: compare the LIC 508D with the results of the criminal.
3. The follow factors should also be documented:
  - The governor's grant of full and unconditional pardon.
  - Character reference(s). References from relatives or employer are not acceptable.
  - A certificate of rehabilitation from the State Board of Corrections or from a Judicial or Superior Court
4. If a placement is sought with a relative who has a conviction of murder or voluntary manslaughter, mayhem, a felony punishable by

death or imprisonment for life, or a felony in which he/she either inflicts great bodily injury on any person other than an accomplice or uses a firearm, attach documentation that the relative:

- Has a recommendation from the District Attorney representing their county of residence, and
  - Following his/her release from parole, probation or incarceration, whichever is sooner:
    - Has conformed to and obeyed the law
    - Has conducted him/herself with "sobriety and industry," and
    - Has "exhibited a good moral character" for at least ten (10) years in the state of residence
    - Has satisfied the **legally required** length of the rehabilitation period. The first two (2) criteria of this legal requirement may be waived if he/she has gone through the process of obtaining a **certificate of rehabilitation**, and has actually received it.
5. Once the determination has been made to request an exemption, complete the first page of the DCFS 5602.
6. Forward the following to documents to the SCSW:
- DCFS 5602
  - **LIC 508D**, Out-of-State Disclosure & Criminal Record Statement Foster Family Homes
  - Live-Scan results
  - FBI clearance, if available
  - **Child Abuse** Central Index (CACI) clearance
  - CWS/CMS search
  - Three (3) character references
  - If available:
    - Out-of-state abuse registry results
    - Certificate of Rehabilitation from the State Board of Corrections from a Judicial or Superior Court
    - Full and unconditional pardon by the governor
7. Upon the SCSW's review and approval, fax the DCFS 5602 and the supporting documents to the ASFA Division.
8. Contact the ASFA Division Chief's office within seven (7) calendar days to inquire about the status of the criminal exemption request.

## Case-Carrying SCSW Responsibilities

1. Review the DCFS 5602 and all supporting documents.
2. If corrections are needed, return to the case-carrying CSW.
3. Upon approval, return the DCFS 5602 and the supporting documents to the case-carrying CSW.

### ASFA Division Designee Responsibilities

1. Upon receipt of the DCFS 5602
  - Review the first page;
  - Complete the second page; and
  - Document any additional information obtained during the investigation, where appropriate, on the DCFS 5602.
    - If any person in the relative's or NREFM's home has a criminal record conviction listed on the [Non-Exemptible Crime List](#), the home must not be approved.
2. If appropriate, submit the DCFS 5602 and the supporting documents to the ASFA Division Chief or designee.
3. Within one (1) day of being notified by the case-carrying CSW:
  - Send a [Notification of an Investigation of Criminal Record](#) letter to the individual with a criminal record, indicating the need for an exemption because his/her criminal record must be further investigated.
  - Send the prospective relative or NREFM a [Notification to Prospective Caregiver of an Investigation of Criminal Record](#) letter indicating the need for an exemption and that someone in his/her home has a criminal record that must be further investigated prior to approving the home.

### ASFA Division Chief or Designee Responsibilities

1. Review the DCFS 5602 and all the supporting documents within five (5) business days of receipt.
  - If approved, sign the DCFS 5602.
  - If not approved, return the DCFS 5602 to the case-carrying CSW and notify him/her that the exemption has been denied.
2. Within one (1) calendar day after the decision has been made, forward a copy of all exemptions, approved and denied, to the

regional SCSW/CSW. File the completed WIC 361.4 Waiver Request packet in the designated office file.

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## Responding when an Exemption is Denied

### ASFA Division Responsibilities

1. If the exemption is denied because the individual with the conviction did not meet the required time frames for conviction, or if there was not sufficient evidence of rehabilitation, send him/her a [Denial of Exemption of Criminal Record](#).
  - Indicate how the standard time frame was not met and that there was not sufficient evidence of rehabilitation presented to approve the exemption.
2. Send the prospective caregiver a [NA 1271](#), Notice of Action - Denial of Home Assessment/Approval. Include the code section, subject, and explanation of unresolved issue(s). Do not list his/her specific criminal conviction information.
3. If the home's denial is based on the relative's or NREFM's criminal history, provide the relative/NREFM with a copy of the criminal clearance within five (5) business days of the CSW being notified that the home was denied.
  - When not furnished in person, mail the copy in an envelope to the relative/NREFM to the address location at which the person receives mail.
  - Document in the Contact Notebook the date, method, and name of the person who was provided with the copy of the criminal clearance.

### Case-Carrying CSW Responsibilities

1. If the child is already in the home, follow the steps outlined in [Home Approvals not Meeting Title 22 Approval Standards](#).
  - Never ask the Court, the child's attorney, opposing counsel, or CASA for an order to prevent the removal of a child from a denied home that did not meet ASFA standards based on Title 22 Regulations.

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## Responding to Changes in a Criminal Conviction after Placement Approval

## Case-Carrying CSW Responsibilities

1. If after a child's placement and upon the annual assessment by the ASFA Division or through a subsequent arrest notification, it is revealed that the caregiver or an adult residing in the home has been convicted of an offense that cannot be exempted or that has not been waived:
  - Immediately remove the child from the home.
  - Consult with the SCSW to determine the most appropriate plan for the child. Refer to [Home Approvals not Meeting Title 22 Approval Standards](#) for more detailed information.
2. If the adult residing in the home has been convicted of an offense that can be granted an exemption:
  - Immediately verify the adult is no longer residing in the home.
  - Begin the process to grant an exemption as outlined in [Requesting a Criminal Records Exemption](#).
3. A child may remain in the home while an exemption request is processed only if the following circumstances apply:
  - It is determined from the reported conviction, the adult's description of the conviction, and other relevant information that the placement will continue to serve the child's best interest and safety, and
  - The approval from the ARA or the RA has been obtained
4. Upon approval of the exemption, the adult with the conviction may return to the home.

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## A Relative or NREFM is Denied a Home Assessment or Home Approval

### ASFA Division CSW Responsibilities

1. Review and provide the relative or NREFM with the completed [DCFS 728, Inspection of Prospective Family Caregiver Home, the NA 1271, Notice of Action-Denial of Home Assessment/Approval, and all other appropriate supporting documentation including the DCFS 725 Corrective Action Plan, DCFS 726 Alternative Plan, SOC 817 Checklist of Health and Safety Standards for Approval of Family Caregiver Home, and SOC 818, Relative or Non-Relative Extended Family Member Caregiver Assessment.](#)
  - State the regulatory standards for the denial.

- Include information regarding the grievance review process.
2. Inform the relative or NREFM of his/her right to a state hearing provided he/she submits a completed NA 1271 within ninety (90) days of receipt of the DCFS 728, Denial of Approval for Family Caregiver Home.
  3. If the basis for the denial of the home approval is the relative's or NREFM's criminal history, provide the him/her with a copy of the criminal clearance within five (5) business days of the CSW being notified the home was denied.
    - When furnished other than in person, mail him/her the copy in an envelope directed to the address location at which the person receives mail.
    - Document in the Contact Notebook the date, method and name of the person who was provided with the copy.
  4. If the child is already in the home and it has been determined by the ASFA Division that the home cannot be approved, notify the child's attorney prior to removal if possible or as soon as possible.
  5. If the denial of the home approval is due to a relative or NREFM's criminal history, provide him/her with a copy of the criminal clearance within five (5) business days of your learning that the home was denied.
    - Provide a copy of the criminal clearance in person or by mail in an envelope addressed to the person the information relates to and to the location at which they receive mail.
    - Enter the date, method, and name of the person who was provided with the copy of the criminal clearance in the Contact Notebook.
  6. If the home was denied and if the child is already in the home, discuss the results of the assessment with the ASFA Division ARA.
    - Notify by email the CSW, SCSW, ARA, RA, Service Bureau Deputy Director (DD), and Service Bureau DD's CSA III that the home was not approved.
    - Notify the prospective caregiver by telephone that his/her home will be not approved.
  7. Send the completed DCFS 728 to the prospective caregiver by first class mail, and specify the reason(s) the home was denied.

8. If the relative or NREFM sends a request for a Harris hearing to DCFS, forward the request to the State Hearings Division (SHD).
9. If the relative or NREFM has requested a Harris hearing and the basis for denial is a non-exemptible offense, request that the assigned Administrative Law Judge (ALJ) resolve it solely on the basis of the written record and without a hearing.
  - To initiate such a request:
    - i. Make a written request to the SHD.
    - ii. Provide the SHD with all documents relevant to a resolution on the record.
    - iii. Provide a copy of the written request and all relevant documents to the relative or NREFM and relative's or NREFM's Authorized Representative (AR).
  - If the relative/NREFM agrees to proceed he/she has ten (10) calendar days from the date of his/her response to provide any additional relevant documentation to the SHD.
10. Once a Harris hearing is scheduled, submit evidence, establishing that an adult in the relative's/NREFM's home or an adult with significant contact with the child/youth has a criminal or child abuse background that resulted in DCFS's denial of the home and/or in its decision that the relative's or NREFM's home does not meet the appropriate health and safety standards.
11. Submit the listed appropriate documentation if the dispute involves any of the following:
  - Criminal or child abuse allegations:
    - i. SOC 815, Approval of Family Caregiver Home
    - ii. DCFS 5602, WIC 361.4 Exemption Request
    - iii. LIC 508 D, Out-of-State Disclosure & Criminal Record Statement
    - iv. Contact entries from other CSWs/staff processing the exemption(s)
    - v. Character reference letters provided by the relative or NREFM in support of a criminal exemption.
    - vi. CWS/CMS incident reports and investigative narratives
    - vii. Evidence establishing criminal activity, such as:
      - Certified Superior Court records of the criminal case
      - Arrest disposition form(s) provided by DOJ
      - Party testimony

- viii. Party admissions or stipulations in fact juvenile records such as Detention hearing reports, Status Review hearing reports, etc.
  - DOJ and Federal Bureau of Investigations (FBI) reports provided through the Live Scan process are not admissible and cannot be relied upon for establishing criminal status at the hearing.
- A relative or NREFM who home failed to meet health and/or safety standards:
  - i. SOC 815
  - ii. SOC 817
  - iii. Contact entries from other CSWs and/or staff processing the home approval.
  - iv. Notice of Deficiency(ies) and Corrective Action Plan(s)
  - v. Documented Alternative Plan Approval or Denial
- A relative or NREFM who failed to meet caregiver qualifications:
  - i. SOC 815
  - ii. SOC 818
  - iii. Contact entries from other CSWs and/or staff processing the home approval.
- A claimant who failed to meet orientation and training requirements:
  - i. SOC 815
  - ii. Contact entries from other CSWs and/or staff processing home approval.

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### ASFA Division Harris Hearings Representative Responsibilities

1. Prepare a statement of position that summarizes the facts of the case and the justification for DCFS's action.
2. Attach copies of the documentary evidence provided by the ASFA CSW and a list of witnesses.

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## APPROVALS

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### Assistant Regional Administrator Approval

- DCFS 5602
- ASFA Division Supervisor Approval
- DCFS 5602

## **HELPFUL LINKS**

### **Attachments**

[Non-Exemptible Crime List](#)

### **Forms**

#### **LA Kids**

[DCFS 725, Corrective Action Plan](#)

[DCFS 726, Alternative Plan](#)

[DCFS 728, Denial of Approval for Family Caregiver Home](#)

[DCFS 5602, WIC 361.4 Exemption Request](#)

[Denial of Exemption of Criminal Record](#)

[LIC 508 D, Out-of-State Disclosure & Criminal Record Statement](#)

[NA 1271, Notice of Action – Denial of Home Assessment/Approval](#)

[Notification of an Investigation of Criminal Record](#)

[Notification to Prospective Caregiver of an Investigation of Criminal Record](#)

[SOC 815, Approval of Family Caregiver Home](#)

[SOC 817, Checklist of Health and Safety Standards for Approval of Family Caregiver Home](#)

[SOC 818, Relative or Non-Relative Extended Family Member Caregiver Assessment](#)

### **Referenced Policy Guides**

[0070-559.10, Clearances](#)

[0100-520.10, Evaluating a Prospective Caregiver](#)

[0100-520.11, When a Child is Residing in the Home of a Relative or Non-Relative Extended Family Member that does not Meet Title 22 Approval Standards](#)

[0300-506.05, Communication with Attorneys, County Counsel, and Non-DCFS Staff](#)

### **Statutes**

[Assembly Bill \(AB\) 2651 – States that criminal background checks are required for an extended list of individuals and under an extended list of circumstances.](#)

[California Department of Social Services \(CDSS\) All County Letter \(ACL\) 13-27 – Provides state hearing procedures for cases where county child welfare agency denied a relative or non-relative extended family member approval to provide care to a juvenile court dependent.](#)

**Community Care Licensing (CCL) Evaluators Manual Section 7-1600** – States, in part, that **if a subsequent conviction is received for an individual who had previously been granted a California Department of Social Services or county licensing agency clearance, the previous conviction should also be reviewed for an exemption according to existing procedures. An action to deny an exemption for a subsequent conviction will result in a reversal of the California Department of Social Services or county licensing agency clearance.**

**CCL Evaluators Manual Section 7-1700** – Defines an exemption as a Department authorized written document that "exempts" an individual from the requirement of having a criminal record clearance.

**Health and Safety Code (HSC) Section 1522(g)(1)(C)** – States that under no circumstances must an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant or any other person specified in subdivision (b) in those homes, has a felony conviction for specific offenses.

**Penal Code (PEN) Section 667.5** – Defines which criminal offenses are considered as "violent felonies" such as murder or voluntary manslaughter; assault with intent to commit rape; sodomy; murder; rape; causing bodily harm or mental suffering to a child; cruel or inhumane physical punishment on a child; lewd and lascivious conduct with a child under fourteen (14) years old, sexual penetration, force; registered sex offender; or crimes against elders.

**PEN Section 4852.13(a)(b)** – States, in part, that if the court finds that the person has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the person has been rehabilitated, and recommending that the Governor grant a full pardon to him or her. No certificate of rehabilitation must be granted to a person convicted of any offense specified in Section 290 if the court determines that the person presents a continuing threat to minors.

**PEN Section 11105** – States in part that a copy of criminal history information must be furnished to the subject person.

**Welfare and Institutions Code (WIC) Section 361.4** – States, in part, that prior to placing a child in the home of a relative, or the home of any prospective guardian or other person

who is not licensed or a certified foster parent, the social worker must visit the home to determine the appropriateness of the placement and initiate a state and federal criminal records check and Child Abuse Central Index (CACI) check.

**WIC Section 361.4(d)(2) – States, in part, that if the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child must not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child, pursuant to paragraph three (3) of this subdivision.**

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