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## EVALUATOR MANUAL TRANSMITTAL SHEET

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<p><b><u>Distribution:</u></b></p> <p>___ All Child Care Evaluator Manual Holders</p> <p>___ All Residential Care Evaluator Manual Holders</p> <p><u>X</u> All Evaluator Manual Holders</p>	<p><b><u>Transmittal No.</u></b> <b>06RM-03</b></p> <hr/> <p><b><u>Date Issued</u></b> <b>March 2006</b></p>
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**Subject:**

**REFERENCE MATERIAL – BACKGROUND CHECK PROCEDURES**

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**Reason For Change:**

To add policy and procedure for fingerprinting:

- non-client children who turn 18 while living or working in a licensed facility
- individuals away on military duty returning to reside in a licensed facility

To delete a duplicative paragraph in EM Section 7-1400

To move and revise instructions regarding 2 or more convictions stemming from a single criminal event

To revise Quarterly County Exemption Report requirements

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**Revised Pages:**

4, 5, 7, 11, 25, 36, and 37

**Reformatted Page:**

6

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**Approved:**

*William C. Jordan, Chief*

*3/23/06*

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WILLIAM C. JORDAN, Chief  
Caregiver Background Check Bureau  
Community Care Licensing Division

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Date

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**7-1000 COUNTIES UNDER CONTRACT TO PROVIDE LICENSING SERVICES (Continued)****7-1000**

Program Investigators prepare certain cases for State Regional Offices but do not perform investigations for counties under contract with the California Department of Social Services. These investigative responsibilities are assumed by the counties under contract. Any questions about how a case should be handled should be referred to the county liaison in the Program Office responsible for that county. All exemption approvals and denials for county licensing agencies must be approved by the Branch Chief, Program Manager or designee, as specified. When a statement refers to Exemption Manager or Unit Manager throughout this section, the county equivalent is the Program Manager or designee. When a statement refers to Branch Chief throughout this section, the county equivalent is two supervisory levels above the Program Manager or designee, as approved by the Department. The County Director of Child Welfare Services or his/her designee shall be responsible for the independent operation of the County's licensing program from the County's child welfare placement program. Documentation of all decisions, including those of the Bureau Chief or designee, shall be maintained in the appropriate facility file.

Caregiver Back Ground Check Bureau and Background Information Review Section sample letters are referenced throughout this section. County licensing agencies may use these letters; however, the counties must modify the letters to reflect the correct county addresses, contacts, phone numbers, and signature blocks and titles. In addition, the body of the letter must be modified to reflect the correct county contact, licensee information, and the appeal address. County licensing agencies use the appeal address of the Program Office which is responsible for that county. Anytime a letter is sent to the Licensee requiring that the individual be removed, a Confirmation of Removal Notice (LIC 300E) must be attached.

**7-1010 QUARTERLY COUNTY EXEMPTION REPORT****7-1010**

County licensing offices must record and report all approved and denied exemptions using the Quarterly County Exemption Report (LIC 9210). The LIC 9210 is available on the California Department of Social Services website at <http://ccl.d.ca.gov/docs/forms.htm>.

The report must be submitted on a quarterly basis as follows:

<u>Reporting Period</u>	<u>Report Due</u>
January through March	April 7
April through June	July 7
July through September	October 7
October through December	January 7

Separate LIC 9210's are required for Foster Family Homes and Family Child Care Homes. LIC 9210's must be submitted to the Program Office as follows:

**Foster Family Homes**

Send **completed LIC 9210** to: Children's Residential Program Office  
100 Corporate Point, Suite 350, M.S. 29-17  
Culver City, CA 90230  
Attn.: Manager of Statewide Foster Care Program

## 7-1010 QUARTERLY COUNTY EXEMPTION REPORT (Continued)

7-1010

Send an additional copy to your local liaison.

**Family Child Care Homes**

Send **completed LIC 9210** to: Child Care Program Office  
744 P Street, M.S. 19-48  
Sacramento, CA 95814  
Attn: County Liaison

The LIC 9210 must include:

- The name of the county.
- The facility type, either Family Child Care Home or Foster Family Home.
- The county liaison's name who is assigned to your county.
- The county liaison's phone number.
- The year of the report.
- The appropriate reporting period.
- The subject's name as it appears on the Department of Justice criminal record. It is not necessary to list all of the aliases as reflected on the rap sheet.
- The facility name and number listed on the license.
- The subject's social security number.
- The subject date of birth.
- The appropriate reporting source: Department of Justice (DOJ), Federal Bureau of Investigation (FBI), self reported on LIC 508 (self), or transferred from another licensing agency (Transfer).
- Type of exemption. Use the following legend: Standard (ST), Simplified (SM), Conditional (C), Individual (I), Non-Exemptible (N) or Denied (D).
- 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. Include all convictions both self-disclosed and from the RAP sheet and list one crime on each line of the form. If the subject was on informal or formal probation, note date ended.
- The individual's association with the facility. Use the following legend: Applicant (A), Licensee (L), Relative/Family Member (R), Individual (I), Employee (E), Other Adult in the Home (O).
- Any additional information, i.e., any additional reports requested such as PD reports, convictions which were pleaded down or dismissed, and if the case was discussed at a legal consultation with your county liaison and staff attorney. Did a minor, non-serious conviction stem from an arrest for a violent crime? If so, was a crime report reviewed? Please indicate if the crime(s) upon which the exemption was determined, considered this "potential for violence" factor in the exemption decision. Note: a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offence, presents a risk of harm or violence. List if the exemption was transferred from another licensing agency, the date of the transfer approval, and which licensing agency approved the original exemption.

**REPORT**

Upon receipt of the LIC 9210 from each county, the program county liaisons will forward a copy to the Caregiver Background Check Bureau, Operations Support Section Manager, at M.S. 19-62, for review. The assigned Caregiver Background Check Bureau analyst will review the reports and will contact the program county liaison, when necessary, to discuss any issues. If necessary, the program county liaison will facilitate getting the county documents supporting the criminal record exemption decision to Caregiver Background Check Bureau for further analysis and review. The program county liaison will note on their copy of the LIC 9210, which cases were reviewed by Caregiver Background Check Bureau. Caregiver Background Check Bureau will follow up on any correction that is needed and will develop and coordinate any training with regard to the correct processing of the exemptions by county licensing staff, with the program county liaison. Caregiver Background Check Bureau will be responsible for conducting training and the program county liaison will coordinate and facilitate them.

The program county liaison will also review the LIC 9210 and contact the county if necessary. In addition to reviewing the LIC 9210 quarterly, the program county liaison will use the LIC 9210's during the on-site county licensing program review to pull a sample of exemption cases that were not previously reviewed by Caregiver Background Check Bureau (10 or 10 % which ever is greater) to review. The program county liaison will also use the sample to check on the accuracy of the LIC 9210's completed by the county.

**7-1020 STATE REVIEW OF COUNTY EXEMPTION CASES****7-1020**

The California Department of Social Services is authorized by a Memorandum of Understanding with specific counties to conduct periodic reviews of that county's processed criminal record exemptions. This review is necessary to ensure statewide consistency with criminal record clearance and exemption statutes, regulations and policies. The review is one mechanism for monitoring the application of these statutes. Counties must maintain and make available upon request, copies of all denied/approved exemptions. The periodic review of the county processed exemption cases will be conducted by the program county liaison.

**7-1100 CRIMINAL RECORD CLEARANCE****7-1100**

A criminal record clearance demonstrated by the absence of any criminal conviction, other than a minor traffic violation.

Specific individuals identified by statute and licensing regulations, must submit fingerprints to the Department of Justice and the Federal Bureau of Investigation for the purpose of conducting a criminal background search. An individual who has been convicted of a crime, other than a minor traffic violation, cannot obtain a community care license, nor can they reside in or have contact with persons receiving care in a licensed facility unless granted a criminal record exemption by the licensing agency.

## 7-1100 CRIMINAL RECORD CLEARANCE (Continued)

7-1100

Non-client children who turn 18 while residing or working in the facility have thirty (30) days from the date of his/her 18<sup>th</sup> birthday to submit fingerprints and obtain a clearance. See Evaluator Manual Section 1-0055 for civil penalty and removal instructions for non-compliance.

Individuals away on military duty who are returning to reside in a licensed facility have thirty (30) days from the date he/she returns to the facility to submit fingerprints and obtain a clearance. See Evaluator Manual Section 1-0055 for civil penalty and removal instructions for non-compliance.

Health and Safety Code Section 1596.871(a) states that no fee shall be charged by the Department of Justice or the California State Department of Social Services for processing the fingerprints of adults associated with children's residential facilities with a capacity of six or fewer and all family child care homes regardless of the capacity. This exemption applies to the Federal Bureau of Investigation processing fees as well. (See Appendix Tab E for Fingerprint Processing Fees).

Facilities exempt from paying the Department of Justice and the Federal Bureau of Investigation fees are:

- Family Child Care Homes
- Small Family Homes
- Group Homes with a capacity of six or fewer
- Foster Family Homes
- Certified Family Homes (certified by Foster Family Agencies)

For Fiscal Years 2003 – 2004 and 2004 - 2005 these categories must pay the FBI processing fee.

### **Transferring a Clearance**

#### **Between State Licensed Facilities Or TrustLine Registry:**

Active criminal record clearances may be transferred between state licensed facilities or the TrustLine Registry program. If an individual has an active clearance, he/she should not be reprinted. Licensees or license applicants may contact their local CCLD Regional Office to verify the individual's status.

To request a clearance transfer between state licensed facilities, a licensee or license applicant must submit an LIC 9182, Criminal Record Clearance Transfer Request form to their Regional Office. Transfers to more than one facility may be requested on one form. Licensees/license applicants may attach a list of each facility number to which the individual is to be transferred.

Transfers requests from the TrustLine Registry to state licensed facilities must be on the TLR3. Transfer requests from state licensed facilities to the TrustLine Registry must be made on the TrustLine application (TLR2).

**7-1400 CHILD ABUSE CENTRAL INDEX (Continued)****7-1400**

The Caregiver Background Check Bureau will clear cases where the underlying investigative facts do not support the allegation of abuse. Allegations of child abuse supported by the underlying facts are referred by the Caregiver Background Check Bureau to the Regional Office for further investigation. The Caregiver Background Check Bureau will send to the Regional Office a copy of the Department of Justice response (including the name of the reporting agency), any initial investigative documents and a transmittal sheet to be returned to the Caregiver Background Check Bureau upon completion of the investigation. The Regional Office **must** conduct the Child Abuse Central Index investigation consistent with Evaluator Manual Section 3-2710.

**7-1410 CHILD ABUSE CENTRAL INDEX IDENTIFICATION****7-1410**

The most important aspect of the Child Abuse Central Index Check match investigation is assuring that the person applying to the licensing agency is the same person named on the Department of Justice notification. Positive identification is critical to protect the rights of the person named on the Child Abuse Central Index Check and may avoid wasting time on unnecessary investigations.

When a Child Abuse Central Index Check possible match is received by the licensing agency, the identity of the individual must be confirmed before initiating an investigation. After confirming the subject's identity, the licensing agency must notify the subject of the Child Abuse Central Index Check possible match and that the licensing agency is conducting an investigation for possible child abuse (BIRS 7c).

The notification may be mailed or given only to the subject and must include the name of the reporting agency and report information. The subject must be notified prior to the final investigative findings of the licensing agency. The subject is responsible for contacting the child protection agency to obtain a copy of the report. The licensee may only be told that the licensing agency is conducting a background investigation of a new employee.

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

1. Check all identifying information on the Child Abuse Central Index Check form and Department of Justice notification to ensure the individual seeking a Child Abuse Central Index clearance with the licensing agency is the person named on the Child Abuse Central Index. Verify the spelling of subject's name, date of birth, and social security number to determine whether the Child Abuse Central Index check and application information match.

## 7-1731 EVALUATION OF STANDARD EXEMPTION (Continued)

7-1731

- Was the individual convicted of one or more violent crimes? Evaluate the severity of violence.

For crimes with an element of violence, submission of the police reports will be of particular importance. If the report is not submitted, the exemption decision should be based on the time period in the regulations for violent crimes. In extraordinary cases, if there is substantial and convincing evidence of rehabilitation, and there is documentation that the report is unavailable, the analyst should consult with the unit manager before deciding to approve the exemption. If the manager concurs that there is sufficient evidence of rehabilitation to proceed with a recommendation to approve the exemption, the case should be discussed with the CBCB Legal consultant. **In all cases involving violence, if there is a decision to approve an exemption, the case must be discussed with the CBCB Legal consultant prior to approval.**

- Are the convictions recent? How long ago? (See Evaluator Manual Section 7-1741 Exemption Decision Guidelines).
- Is there a pattern of repeat violations? If an individual meets the timeframes outlined in the criteria and is eligible for an exemption, review the pattern of offenses and the time lapsed between convictions. Individuals with convictions for a series of similar crimes must show a significant effort to change their behavior.
- Do the individual's convictions demonstrate a pattern which may be detrimental to the clients in the facility?
- Does the individual have multiple convictions not addressed in the exemption criteria such as a misdemeanor/felony combination? If so, consider the whole record. Any time there is a misdemeanor/felony combination, use the felony criteria.
- Was there a victim? If the crimes were the crimes victimless, was there potential danger?
- What age was the individual when the crimes were committed?
- Was there impaired judgment?
- Was there a violation of trust? If there was a victim, was the victim a dependent individual - the type of individual cared for in a community care facility such as a child, an elderly person or a developmentally disabled person?

## 7-1735 DECISION CRITERIA (Continued)

7-1735

- (2) The individual has been convicted of two or more nonviolent misdemeanors and four years have lapsed since incarceration or completion of supervised probation or parole. If unsupervised probation, 4 years since the date of the conviction. \*

*Any exception to the time period must be approved by the Branch Chief or county equivalent.*

- (3) The individual has been convicted of one (1) or more violent misdemeanors and 15 years have lapsed since incarceration or completion of supervised probation. If unsupervised probation, 15 years since the date of the last violent misdemeanor conviction.\*\*

*All exemptions must be approved by the Branch Chief or county equivalent and by legal.*

- (4) The individual has been convicted of one nonviolent felony and four years have lapsed since incarceration or completion of supervised probation or parole, whichever is latest. If unsupervised probation, 4 years since the date of the conviction.

*Any exceptions to the time period must be approved by the Branch Chief or county equivalent.*

- (5) The individual has been convicted of two or more nonviolent felonies and ten years have lapsed since incarceration or completion of supervised probation or parole. If unsupervised probation, 10 years since the date of the conviction. \*\*\*

*Any exceptions to the time period must be approved by the Branch Chief or county equivalent.*

- (6) The individual has not been convicted of a violent felony.

*All exemptions must be approved by the Branch Chief or county equivalent and by legal.*

\*If it can be determined from the rap sheet or arrest report that an individual received two or more convictions for lesser offenses from a single criminal event, an exception to the time period may be considered.

\*\*If the individual has a combination of convictions that include violent misdemeanor(s) and nonviolent misdemeanors and/or nonviolent felonies, apply the criteria from columns A, B or C that provides the longest time periods since the last conviction, incarceration or supervised probation. In addition, consider the full criminal history as required by EM Section 7-1731 through 7-1733.

## 7-1735 DECISION CRITERIA (Continued)

7-1735

\*\*\* If the individual has a combination of convictions that include both a nonviolent felony and nonviolent misdemeanor(s), consider the full criminal history as required by EM Section 7-1731 through 7-1733. In addition, determine if the misdemeanor(s) conviction and the felony conviction are similar crimes. In cases where there is a combination of crimes including a nonviolent felony and nonviolent misdemeanor(s), use the standard for 2 or more nonviolent felonies unless it is determined that the 4 year time frame is more appropriate because of the nature of the offenses. If the 4 year criterion is recommended, approval by a first level supervisor is required.

Determining Probation Type

- Generally, individuals convicted of non-violent lesser offenses will be placed on unsupervised or informal probation, unless the rap sheet indicates otherwise. An individual on unsupervised or informal probation is not under the direct supervision of a probation officer and is not subject to periodic checks. Usually the individual must only refrain from further criminal activity and report address changes to his/her probation officer.
- If the conviction was for a felony or a violent misdemeanor, you can assume that the probation was supervised or formal, unless the rap sheet indicates otherwise. An individual on supervised or formal probation is under the direct supervision of a probation officer and is subject to periodic checks.

In cases in which the presumption is that the probation is formal or supervised, and the individual claims he/she was or is on unsupervised or informal probation, the individual must present evidence to support that claim. The individual must submit either:

- a. Acceptable court documents such as Minute Order, Orders of Judgment and Sentence, or Probation Modification Orders. The Judgment of Conviction may also indicate the probation type.

These documents will reflect either a “conditional” sentence, which indicates that the individual was placed on unsupervised or informal probation by the judge directly, or a specific designation that the probation was informal (inf) or unsupervised, which means that the probation status was determined by the probation officer.

- b. A letter from his/her probation officer indicating that they are on unsupervised or informal probation.

If there is evidence that the probation status has been changed from formal to informal, the time frames in the Criteria should be applied to the length of time since the end of formal probation.