EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:	**Transmittal No.** 12RM-02
___ All Child Care Evaluator Manual Holders __ All Residential Care Evaluator Manual Holders _X_ All Evaluator Manual Holders	**Date Issued** **July 2012**

Subject:

REFERENCE MATERIAL – Background Check Procedures

Reason for Change:

To revise:

Criminal record clearance procedures – Sections 7-1100, 7-1600
Exemption transfer procedures – Section 7-1700
Initial and subsequent arrest-only investigation criteria – Sections 7-1535, 7-1536, 7-1800, 7-1811, 7-2125

Filing Instructions:

REMOVE –Entire Background Check Procedures Section

INSERT – This Package

Approved:

Original Document Signed by DORETTE PIERCE ***7/16/12***

DORETTE PIERCE, Chief Date
Caregiver Background Check Bureau
Community Care Licensing Division

Contact Person: Mariahelena Jimenez-Romo Phone Number: (916) 651-5187

REFERENCE MATERIAL

FOR

BACKGROUND CHECK PROCEDURES

Caregiver Background Check Bureau 7-0000

Counties under Contract to Provide Licensing Services.....7-1000
Quarterly County Exemption Report.....7-1010
State Review of Quarterly County Exemption Report 7-1015
State Review of County Exemption Cases 7-1020

Criminal Record Clearance.....7-1100
Criminal Record Statement (LIC 508).....7-1110
Excluded Individuals Rejected by the Department of Justice
Interface Report (LISD2LAR).....7-1120

Name Search 7-1200

Federal Bureau of Investigation.....7-1300

Child Abuse Central Index.....7-1400
State Licensing: Child Abuse Central Index 7-1410
County Licensing: Child Abuse Central Index 7-1420
Child Abuse Central Index Identification.....7-1430
Child Abuse Central Index Follow-up Procedure.....7-1440

Adam Walsh Child Protection and Safety Act of 2006 7-1450
State Licensing: Out-of-State Child Abuse / Neglect Registry Checks.....7-1460
County Licensing: Out-of-State Child Abuse / Neglect Registry Checks.....7-1470

Criminal Offender Record Information (Rap Sheet) 7-1500
Non-Exemptible Convictions – Initial Inquiry 7-1510
Federal 5-Year Ban – Initial Inquiry.....7-1511
Certificate of Rehabilitation – Health and Safety Code 1522.....7-1515
Felony Convictions – Initial Inquiry.....7-1520
Misdemeanor Convictions – Initial Inquiry.....7-1530
State Licensing: Arrest Only – Initial Inquiry 7-1535
County Licensing: Arrest Only – Initial Inquiry 7-1536
Diversion / Deferred Entry of Judgment.....7-1540
Pardons, Set-aside / Dismissed and *Nolo Contendere* Pleas 7-1550

Department of Social Services Clearance – County Licensing Agency Clearance.....7-1600

Exemption.....7-1700
Exemption Request.....7-1710
Simplified Exemption.....7-1720
Standard Exemption.....7-1730
Evaluation of Standard Exemption 7-1731
Conditional Exemption 7-1731.1
Judgment of Conviction.....7-1734
Decision Criteria 7-1735
Exemption Decision Chart.....7-1736

Notification of the Exemption Decision 7-1740

Appeal of the Exemption Denial.....7-1760
Exemption Transfer 7-1770

State Licensing: Arrests – Subsequent to a Clearance or Exemption.....7-1800
County Licensing: Arrests – Subsequent to Clearance or Exemption.....7-1811

Warrants.....7-1812

Immediate Removal from Facility.....7-1815

State Licensing: Convictions - Subsequent to Clearance or Exemption.....7-1820

County Licensing: Convictions - Subsequent to Clearance or Exemption..... ...7-1821

Administrative Actions.....7-1900

Criminal Record Information Retention.....7-2000
Confidentiality of Criminal History Information.....7-2010

Non-Exemptible Crimes 7-2100
Federal Non-Exemptible – Foster and Certified Family Homes 7-2110
Federal 5-Year Ban – Foster and Certified Family Homes 7-2115
Additional Arrests Requiring Investigation.....7-2125
Nonviolent Misdemeanors / Infractions.....7-2150

Frequently Used Acronyms 7-2200

7-0000 CAREGIVER BACKGROUND CHECK BUREAU 7-0000

The Caregiver Background Check Bureau of the Community Care Licensing Division was established in January of 1992, to meet the statutory requirements of Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871. Prior to January 1992, this function was performed by the Regional Offices.

The Caregiver Background Check Bureau:

- Reviews criminal history information (arrests and convictions) and renders decisions for licensed facilities and for the TrustLine Registry.
- Reviews Child Abuse Central Index possible matches and renders decisions for licensed facilities and for the TrustLine Registry.
- Conducts presentations on the Caregiver Background Check Bureau's functions. Answers questions from the public, licensed providers and exemption applicants.

The information contained in this section of the Evaluator Manual Reference Material is of a general nature and augments the applicable regulations, i.e., General Requirements Section 80019, Foster Family Homes Section 89219, Adult Day Programs Section 82019, Crisis Nurseries Section 86519, Family Child Care Section 102370, Residential Care Facilities for the Elderly Section 87355, Child Care Centers Section 101170, and Residential Care Facilities for the Chronically Ill Section 87819.

The Caregiver Background Check Bureau has taken steps to ensure that the information in this section is consistent with the applicable laws and regulations. If there is any conflict, the law or regulation will prevail. If you have questions related to any of these general process descriptions, contact the Caregiver Background Check Bureau or Regional County Liaison for clarification.

7-1000 COUNTIES UNDER CONTRACT TO PROVIDE LICENSING SERVICES 7-1000

All counties under contract to perform licensing functions, per Memo of Understanding and Agreements, are responsible for reviewing criminal record information, investigating relevant arrests and child abuse possible matches, and processing requests for exemptions consistent with this section of the Evaluator Manual and as prescribed in Evaluator Manual Section 1-0020, Licensing Responsibilities Performed by the Counties.

In most instances, statements which refer to the Caregiver Background Check Bureau and Community Care Licensing Division's Regional Offices are equally applicable to county licensing offices.

When there are differences between the handling of Community Care Licensing Division and county cases, specific instructions for the county will be included. References to the Investigations Branch and Investigators are not, however, applicable to counties.

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

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 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 Background Check Bureau and Arrest Only sample letters are referenced throughout this section. County licensing agencies must use these letters to create their own, modifying only the addresses, contacts, phone numbers, and signature blocks. The body of the letters should not be modified as they are written to comply with state law, regulations and court decisions. 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 subject 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://www.dss.cahwnet.gov/cdssweb/PG166.htm#lic .

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

Reporting Period	Report Due
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's date of birth.
- The appropriate reporting source: Department of Justice (DOJ), Federal Bureau of Investigation, 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), Subject (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 supervised or unsupervised probation, note date ended.
- The subject's association with the facility. Use the following legend: Applicant (A), Licensee (L), Relative/Family Member (R), Subject (I), Employee (E), and Other Adult in the Home (O).
- Any additional information, i.e., any additional reports requested such as police 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, nonserious conviction stem from an arrest for a violent crime? If so, was a crime report reviewed? Indicate whether the "potential for violence" factor was considered in making 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 threat 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.

7-1015 STATE REVIEW OF QUARTERLY COUNTY EXEMPTION REPORT 7-1015

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.

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 9210s 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% whichever is greater) to review. The program county liaison will also use the sample to check on the accuracy of the LIC 9210s 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

Specific subjects identified by statute, must submit fingerprints to the Department of Justice and the Federal Bureau of Investigation for the purpose of a criminal record background check.

A subject will obtain a criminal record clearance if he/she has no felony or misdemeanor convictions reported by the California Department of Justice or the Federal Bureau of Investigation. The subject may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile and still have a criminal record clearance. See also Licensing Agency Clearance (Evaluator Manual, Reference Material, Background Check Procedures, Criminal Record Clearance, Section 7-1600).

A subject who has been convicted of a crime, other than a minor traffic violation, cannot obtain a community care license, obtain registration as a TrustLine child care provider, 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**

Transferring a Criminal Record Clearance

Between State Licensed Facilities Or From the TrustLine Registry To a State Licensed Facility:

Criminal record clearances may be transferred between state licensed facilities or the TrustLine Registry program provided:

1. The subject has an "active" status at the Department of Justice, that is, the licensing agency that requested the background check is still authorized to receive subsequent history information from the Department of Justice and has not made the subject inactive by returning a 'no longer interested' form to the Department of Justice.
   - Licensees or licensee applicants may contact their local Community Care Licensing Division Regional Office to verify the subject's status.

2. The licensee or license applicant has submitted a Criminal Record Clearance Transfer Request form (LIC 9182) or a TrustLine to Community Care Licensing Background Clearance Transfer Request (TLR 3) to their Regional Office.
   - Transfers to more than one facility may be requested on one form.
   - Licensees/license supplicants may attach a list of each facility number to which the subject is to be transferred.

Instructions for Regional Office

Upon receipt of a completed Criminal Record Clearance Transfer Request form (LIC 9182), process the transfer in the Licensing Information System.

If the Licensing Information System does not allow the transfer become the subject has a status of "Cleared BIRS". Forward the request to Caregiver Background Check Bureau. (BIRS is an acronym for Background Information Review System.)

In addition, for facilities that care for children, review the submission date of the Child Abuse Central Index check. If the inquiry was made prior to January 1, 1999, the subject must submit a new Child Abuse Check Index request as part of the transfer process. The Regional Office must ensure that the subject submits a Child Abuse Central Index Check (LIC 198A) and the current processing fee to the Department of Justice before finalizing the transfer.

7-1100 CRIMINAL RECORD CLEARANCE (Continued) **7-1100**

Instructions for Caregiver Background Check Bureau

If the subject of the transfer has a rap sheet that contains arrests for crimes listed on the Non Exemptible crimes list (Evaluator Manual, Reference Material, Background Check Procedure, Section 7-2100), the Additional Arrests Requiring Investigation crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2125) or, for Foster Family and Certified Family Homes, Federal Crimes lists (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2110 and 7-2115), that have not previously been referred for investigation, transfer the clearance and refer the case to the Investigations Bureau for investigation (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-1800 and 7-1811).

All clearance transfer requests must be submitted to the Department before the person, who is subject to the transfer, has client contact or the licensee will be in violation of the law and subject to a $100 civil penalty. *A subject need not wait for a confirmation of the transfer before he/she can begin work or be present in the facility.* Licensees must maintain evidence of the submission for licensing agency review.

A completed FBI criminal history check is required prior to transfer for Foster Family Homes and Certified Family Homes.

From a State Licensed Facility to the TrustLine Registry:

Transfer requests from state licensed facilities to the TrustLine Registry may be made on the TrustLine Registry In-Home/License Exempt Child Care Provider application (TLR 1, 2, or 4). Applicants must check "Yes" in the transfer process section of the application.

Between County Licensing Agencies Or Between State And County Licensing Agencies – Family Child Care, Foster Family Homes and Certified Homes Only:

If a Family Child Care Home, Foster Family Home or Certified Family Home applicant, employee or resident indicates that he/she has a licensing agency processed background check, the results of that check and subsequent criminal record information (rap back service) may be transferred to another contracted county licensing agency or to Community Care Licensing provided:

1. The transfer is within the same licensing category, i.e. Family Child Care Homes to Family Child Care Homes and Foster Family Homes to Foster Family Homes. Certified Family Homes are defined by the Department of Justice as the same facility type as licensed Foster Family Homes, therefore transfers between Foster Family Agencies Certified Homes and county licensed Foster Family Homes are allowed.

2. The subject has an "active" status at the Department of Justice, that is, the licensing agency that requested the background check is still authorized to receive subsequent history information from the Department of Justice and has not made the subject inactive by returning a 'no longer interested' form to the Department of Justice.

7-1100 CRIMINAL RECORD CLEARANCE (Continued) **7-1100**

3 A completed FBI Criminal history check has been received.

AND

4 Department of Justice confirms that the authority to receive rap back service has been transferred to the licensing agency requesting the transfer (specifics below).

The following transfers are NOT allowed;

- Between Foster Family Home and homes utilized by another county for placement of a relative child.

- Between persons on the TrustLine Registry and county licensed Family Child Care Home or Foster Family Home.

Process for Requesting and Completing a Transfer of Clearance

If a Family Child Care Home, Family Foster Home or certified home applicant, employee or resident indicates that he/she had a background check processed through another licensing agency, he/she may be eligible to have the results of that check transferred.

The licensing agency requesting the transfer must contact the licensing office that processed the background check to inquire as to whether the subject has a clearance or a criminal record exemption (see Evaluator Manual Section 7-1770 for exemption transfers) and to determine if the subject's background check meets the transfer requirements listed above. For background checks processed by state licensing, contact Caregiver Background Check Bureau Customer Service at (916) 653-3800. If the background check was processed by a county licensing agency and the correct office cannot be located, contact your County Liaison.

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

- Give the subject a copy of the Substitute Agency Notification Request (BCII 9002), the phone number of the licensing office that processed the background check and instructions to:
  - Complete Step I of the form (applicant information).
  - Contact the licensing agency that processed the clearance to obtain information to complete Step II.
  - Return the form with Step I and Step II completed.

  Copies of the form are available on the DSS Community Care Licensing Division website at http://www.dss.cahwnet.gov/cdssweb/PG164.htm#b.

7-1100 CRIMINAL RECORD CLEARANCE (Continued) **7-1100**

- When the subject returns the form with Step 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 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 licensing agency requesting the transfer.

- When the approved form is received from the Department of Justice, send a copy of the form to the licensing agency that processed the clearance.
  - Licensing agencies receiving notice that the Department of Justice has authorized the transfer of rap back service to another licensing agency must inactivate the subject 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: http://oag.ca.gov/sites/all/files/pdfs/fingerprints/forms/nli.pdf/#xml=htpp://search.doj.ca.gov:8004/AGSearch/isysquery/04c95db5-1626-4f6f-a5a2-d208df64371/1/hilite/

- Complete Step III of the Substitute Agency Notification Request (BCII 9002) and send the completed form to Department of Justice.

The licensing 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 subject must submit a new Child Abuse Central Index request as part of the transfer process. The licensing agency requesting the transfer must ensure that the applicant submits 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, to the Department of Justice.

Licensure or certification cannot be approved until the Department of Justice has approved the transfer.

NOTE: The above transfer procedures are for CLEARANCES ONLY. See Evaluator Manual Section 7-1770 for exemption transfer procedures.

Chain Facilities – Central Administrative Facility:

A licensee with multiple licensed facilities may request a **waiver** (Evaluator Manual Section 2-5000) to be allowed to designate one facility, within a regional office, as the central administrative facility to which all criminal record background checks may be associated. A request for a waiver must be submitted to and approved by the Regional Office. The request must be in writing and the licensee must agree to:

7-1100 CRIMINAL RECORD CLEARANCE (Continued) **7-1100**

- Submit an updated LIC 500 quarterly for each facility.
- Designate a staff person in the facility that has been designated as the central administrative facility to provide any licensing agent a record of which facility each staff person has worked. The record must include dates.
- Inform the director/administrator of each facility which staff person currently working in the facility has a criminal record exemption.

If the Regional Office approves the waiver, staff associated to the central administrative facility may work in any of the facilities in the region without transferring or adding associations. Staff currently associated to each individual facility need not be transferred to the central administrative facility.

If a licensee of multiple facilities does not have an approved waiver to associate all employees criminal record background checks to one designated central administrative facility, and an employee is found to be working in a facility he/she is not associated to, the Licensing Program Analyst must cite the licensee, assess civil penalties, and give the facility administrator a Criminal Background Check Transfer Request form (LIC 9182) to complete during the visit.

7-1110 CRIMINAL RECORD STATEMENT (LIC 508) 7-1110

All license applicants, non-client adult residents, and employees associated with the facility at the time of application must have a criminal record clearance or a criminal record exemption (Evaluator Manual Section 7-1700, Exemption) prior to licensure. Subsequent to licensure, all persons having contact with clients of or residing in a licensed facility must submit fingerprints to the Department of Justice and the Federal Bureau of Investigation and have a California clearance or a criminal record exemption prior to initial presence in the facility. Because a subject may begin work or be present in a licensed facility before a response from the Federal Bureau of Investigation is received, subjects submitting fingerprints must sign a Criminal Record Statement (LIC 508). This statement requires the subject to disclose any prior convictions. All convictions and conduct associated with marijuana convictions must be disregarded, as covered by the Marijuana Reform Act of 1977 (Health & Safety Code sections 11361.5 and 11361.7). The LIC 508 informs the licensee that they must inform their Licensing Program Analyst that the subject disclosed convictions on the LIC 508 and send the analyst a copy of the subject's LIC 508. For TrustLine applicants, the TLR 508 must be used.

If the subject discloses convictions on the LIC 508, other than a minor traffic violation or minor marijuana convictions over two years old, the Regional Office must immediately forward a copy of the LIC 508 and any attached explanation or documentation to the Caregiver Background Check Bureau. An individual who discloses convictions cannot work or be present in a licensed facility until an exemption has been granted.

The Caregiver Background Check Bureau will maintain the LIC 508 and match it with a rap sheet when received. The convictions disclosed must be compared with the convictions on the subject's RAP sheet. Discrepancies and omissions must be factored in to the exemption decision (see Evaluator Manual Section 7-1730).

In cases where the subject discloses convictions on the LIC 508 and the convictions do not appear on his/her rap sheet or a clearance is received, the licensing 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 Evaluator Manual Sections 7-1820 and 1821). The subject may be subject to removal (see Evaluator Manual Section 7-1815).

County licensing agencies conduct their own investigations and follow-up on LIC 508 disclosures. Licensing agencies should make sure that the latest revision date of the LIC 508 is available to and used by applicants and licensees. LIC 508s may be downloaded from the Internet and copied.

7-1120 EXCLUDED INDIVIDUALS REJECTED BY THE DEPARTMENT OF JUSTICE INTERFACE REPORT (LISD2LAR) 7-1120

Field offices receive a Licensing Information System Generated Excluded Individuals Rejected by the Department of Justice Interface Report (LISD2LAR) when an individual who is identified as having been excluded from a facility attempts to become associated to a new facility. This report is intended to ensure that Regional Offices are aware of the need to verify whether it is appropriate for the individual to become associated to a new facility. The report prints at each field office default printer and identifies the individual by name, social security number, and date of birth. This report will print when the

7-1120 EXCLUDED INDIVIDUALS REJECTED BY THE DEPARTMENT OF JUSTICE INTERFACE REPORT (LISD2LAR) (Continued) **7-1120**

Licensing Administrative Action Records System (LAARS) identifies that an individual has a prior administrative action. The report also includes the date that the individual submitted fingerprints to become associated to a new facility, the facility number for their new association, and the current Department of Justice response to the fingerprint submission.

As these individuals have a prior administrative action, it is important that the Regional Manager or designee review these cases quickly to ensure that individuals who may be a risk to clients are not allowed to work or reside in a licensed facility. If the individual does not have a criminal record, the facility or applicant will have likely received a clearance notice from Department of Justice. In the case of employees, the licensee may have hired someone based on the Department of Justice clearance notice they received.

Cases with a Clearance

If the individual does not have a criminal record or possible Child Abuse Central Index (CACI) match, the prior administrative action was based on conduct only. For these cases, the Regional Office is to proceed as follows:

- Contact the facility to determine if and how the individual is associated to the licensed facility. This action can be accomplished by informing the facility that Community Care Licensing is updating its records and confirming the individual's current association with the facility;

- Check Licensing Information System and legal sources for the individual to identify the specific prior legal action and facility association;

- Obtain and review the prior Decision and Order or other legal documents through a review of the Licensing Administrative Action Records System Extranet secure website.

    - Once logged-on to the system, the Regional Manager or designee will enter identifying information for each individual. In order to obtain information from the system, the identifying information entered must exactly match the information contained in Legal Case Tracking System (LCTS). If the query does not reflect a match with any of the personal identifiers, then there are no identified licensing administrative actions against the individual.

    - If the individual is identified as having been involved in a licensing administrative action, the Regional Manager or designee will need to obtain more information about the licensing action and to assess how that prior action affects their current case. The system will include document links to the signed legal documents. If the legal documents cannot be obtained, please

7-1120 EXCLUDED INDIVIDUALS REJECTED BY THE DEPARTMENT OF JUSTICE INTERFACE REPORT (LISD2LAR) (Continued) **7-1120**

send an email request, stating the individual's name and case number, to the Legal Division at LAARS-CCL@dss.ca.gov.

- Decision and Order and Stipulation are binding legal documents. The Regional Manager or designee should discuss with their consulting attorney before making a decision. Legal action, including issuance of an immediate exclusion order will be necessary if the person is not already subject to a presently enforceable exclusion order. This action must happen quickly as many of these individuals have the right to employment and presence in a community care facility with a California clearance.

Actions after Case Review

Several possible actions may be initiated after review:

- If it is determined that the individual is under a presently enforceable exclusion order preventing their presence in a licensed facility, the Regional Manager or designee should immediately notify the facility that the individual is not approved to work or reside in the facility and must be removed. If there is any indication or suspicion that the individual is or will be working or residing in the facility, it may be necessary for the licensing program analyst to conduct a case management visit to verify that the individual is not present. The Regional Manager or designee must send a copy of the Decision and Order to the licensee and contact Caregiver Background Check Bureau via email at CBCB-AAFlags@dss.ca.gov. The Caregiver Background Check Bureau will notify the Community Care Licensing Division (CCLD) Application Support Desk to update the Licensing Information System administrative action comment section to reflect the current exclusion. The Regional Manager or designee must work with the consulting attorney to consider any other appropriate legal action (i.e., denial, revocation, or exclusion).

- If it is determined that the individual is not under a presently enforceable exclusion order preventing their presence in a licensed facility but the Regional Office deems the individual poses a risk to the health and safety of clients in care, consult Legal for further action. The Caregiver Background Check Bureau cannot unilaterally deny the clearance or association based on a Regional Office's belief that the person will be a risk to clients. The Regional Office must take the affirmative step of issuing an exclusion order before the person can be prohibited from working or residing at the facility.

- If it is determined that the individual is not under a presently enforceable exclusion order and no affirmative legal step to exclude has been taken, he or she has a legal right to work or reside in a facility, the Regional Manager or designee shall notify the Caregiver Background Check Bureau that the individual may now be associated. Notification shall be made via e-mail address at CBCB-AAFlags@dss.ca.gov and

7-1120 EXCLUDED INDIVIDUALS REJECTED BY THE DEPARTMENT OF JUSTICE INTERFACE REPORT (LISD2LAR) (Continued) **7-1120**

shall include the individual's Personnel Identification number and assigned facility number.

- The Caregiver Background Check Bureau will enter the new association and criminal history status for the individual into the Caregiver Background Check system.

- The Caregiver Background Check Bureau will then notify the Community Care Licensing Division Application Support Desk to change the administrative action flag status to "reinstated" and annotate the following comment: "On (date) Regional Office #___ reviewed the legal case and the individual's history and a decision has been made to allow the individual to be licensed, reside or work in a facility."

- If it is determined that the individual was flagged inaccurately, the Regional Manager or designee must notify the Community Care Licensing Division Application Support Desk to remove the administrative action flag. Their telephone (916) 323-6102 or ccldappsuppdesk@dss.ca.gov.

- An administrative action flag is only deemed inaccurate if the individual was never the subject of an administrative action to revoke or deny their licenses, or to exclude them from a facility.

  - If the individual was involved in a prior action, but was not revoked, denied, or excluded (for example, individual was approved to work through a stipulated probation), it may also be appropriate to notify Legal that the information in the Legal Case Tracking System for the individual, needs to be corrected to display the appropriate status or case closure information. Notify Legal via e-mail at LAARS-CCL@dss.ca.gov.

  - If the individual was previously denied, revoked, or excluded but is determined to now be allowed to be associated to a facility, their association needs to be restored as noted above, but the prior flag will not be removed.

Cases with a Prior Clearance that now have a criminal conviction, arrest or Child Abuse Central Index (CACI) hit

If the individual has a previous clearance and the administrative action was based on conduct not related to the current conviction or arrest, the Caregiver Background Check Bureau will contact the Regional Office by e-mail to inform them that the individual has a current criminal history.

After reviewing the administrative action and consulting with their legal consultant, the

7-1120 EXCLUDED INDIVIDUALS REJECTED BY THE DEPARTMENT OF JUSTICE INTERFACE REPORT (LISD2LAR) (Continued) **7-1120**

Regional Manager or designee must contact the Caregiver Background Check Bureau via e-mail address at CBCB-AAFlags@dss.ca.gov, to take one of the following steps:

- If the Regional Manager or designee determines that the individual may be licensed or present in a facility, the Regional Manager or designee must notify the Caregiver Background Check Bureau that the exemption process may begin. The case will be assigned to an exemption analyst.

- If the Regional Manager or designee determines that the individual may not be licensed or present in a facility, the Regional Manager or designee must work with Legal and the Caregiver Background Check Bureau for further action. The Regional Manager or designee shall then work with the consulting attorney to take appropriate action (i.e., denial, revocation, or exclusion).

Cases with Prior Criminal History

If the individual has a prior conviction, arrest, or possible Child Abuse Central Index match, the Caregiver Background Check Bureau will receive a rap sheet or notice of a possible Child Abuse Central Index match from the Department of Justice. For these cases, the Caregiver Background Check Bureau will review the information received from the Department of Justice and determine if the previous administrative action is related to an exemption denial, or an exclusionary action taken by either the Caregiver Background Check Bureau or the Program Office.

- If it is determined that the previous administrative action is related to an exemption denial, the Caregiver Background Check Bureau will obtain and review the legal documents to determine if the individual can now go through the exemption review process. If the individual is eligible, the Caregiver Background Check Bureau will process the exemption case using current procedures. If the individual is not eligible, the Caregiver Background Check Bureau will notify the Community Care Licensing Division Application Support Desk to update the administrative action comment section.

Standardized Language to be used in Licensing Information System Administrative Action Comment Section

If the Regional Manager or designee determines that it is okay for the individual to be licensed or present in the facility – the administrative action flag will be changed to "AA-reinstated" and a comment added that says:

> On (date) Regional Office #___ reviewed the legal case and the individual's history and a decision has been made to allow the individual to be licensed, reside or work in a facility.

7-1120 EXCLUDED INDIVIDUALS REJECTED BY THE DEPARTMENT OF JUSTICE INTERFACE REPORT (LISD2LAR) (Continued) 7-1120

If the Regional Manager or designee determines that it is not okay for the individual to be licensed or present in the facility – the administrative action flag will not be changed and one of the following comments will be added:

On (date) Regional Office #___ reviewed the legal case and the individual's history

and the Stipulation/ Decision and Order excluded the individual for life. The individual is not eligible to be licensed, reside or work in a facility.

and after legal consult, the Department deems the individual poses an immediate risk of harm to the health and safety of clients in care, legal action(s) proceeding.

and the Stipulation/ Decision and Order excluded the individual for ___ years, from ___ to ___. Therefore, he/she is not eligible to be licensed, reside or work in a facility until after ___.

7-1200 NAME SEARCH 7-1200

A name search is an alternate type of criminal history inquiry that is conducted for individuals who have a medical problem and/or a disability that prevents them from providing clear fingerprints either manually or electronically, or for individuals whose LiveScan fingerprints have been rejected twice due to poor fingerprint image quality.

Name Search for Rejected Fingerprints

Department of Justice:

If an individual's fingerprints are rejected by the Department of Justice for a California criminal record search, the Department of Justice will automatically conduct a criminal history inquiry based on available personal identifying data (name, social security number, date of birth, etc.) if:

- a subject's fingerprints have been rejected twice and, if applicable, the subject has a cleared Child Abuse Central Index, or
- a subject submits fingerprints with a law enforcement agency verification that the subject is unable to provide legible prints and, if applicable, the subject has a cleared Child Abuse Central Index.

7-1200 NAME SEARCH (Continued) **7-1200**

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.

State Licensing

- Regional Office staff must contact the Caregiver Background Check Bureau OSSII to request a Federal Bureau of Investigation name search.
- Fax or email copies of both reject notices to Caregiver Background Check Bureau.
- Caregiver Background Check Bureau staff will complete and forward a name search request form to Department of Justice.

County Licensing

To request a name search, an authorized applicant (licensing) agency must send a letter to the Department of Justice, on agency letterhead, requesting a name-based criminal history search in lieu of a fingerprint search. The letter must include:

- all personal identifying information available on the applicant,
- applicant type,
- applicant title,
- ORI #,
- level of search (Federal),
- method of payment (fees attached or to be billed),
- copies of both reject notices or an explanation why the subject cannot submit fingerprints,
- a statement that the authorized applicant (licensing) agency certifies, under penalty of perjury, that the applicant's medical condition was verified, and
- a statement that the authorized applicant (licensing) agency understands that the Department of Justice is not liable for any misidentification made pursuant to this request or information subsequently provided.

See sample in the Common Library and in Appendix H (CBCB Template NS-1).

7-1200 NAME SEARCH (Continued) 7-1200

Requests must be sent to:

Department of Justice,
Section Manager
Applicant Response Section
4949 Broadway, Room H-127
Sacramento, CA 95820

Name Search for Medical Reasons

If the individual is unable to submit fingerprints for medical reasons (e.g. no fingers, hands are atrophied to the point of being unable to submit to a fingerprint roll, or similar disability), a name search may be requested.

Follow the process outlined above for rejected fingerprints, adding documentation of:

- Law enforcement verification that a medical/physical reason exists for the lack of fingerprints, or
- Medical documentation provided on physician's letterhead with physician's signature, verifying and explaining the individual's inability to submit fingerprints.

Name Search Results

The Department of Justice will send the contributing (licensing) agency a rap sheet if the name search revealed a conviction or arrest. If the name search does not reveal a conviction or arrest, the Department of Justice will send a "Notification of No Criminal History" letter to the subject and to the contributing (licensing) agency.

For state licensed facilities, the Caregiver Background Check Bureau will enter the clearance on the Licensing Information System.

The licensing agency will not receive subsequent arrest or conviction information for subjects issued a "clearance" based on a name search.

7-1300 FEDERAL BUREAU OF INVESTIGATION 7-1300

The Health & Safety Code requires that all subjects, 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.

For all license categories, except foster family and certified family homes, statute allows the licensing agency to approve a license if all licensing requirements have been met and only the Federal Bureau of Investigation response is outstanding. However, if the subject discloses a conviction on the Criminal Record Statement (LIC 508), the person may not be licensed until all criminal background issues are resolved. See Evaluator Manual Section 7-1110, Criminal Record Statement.

7-1300 FEDERAL BUREAU OF INVESTIGATION (Continued) **7-1300**

If a facility is licensed based upon a California clearance and no disclosures on the Criminal Record Statement, and later a Federal Bureau of Investigation rap sheet is received indicating an arrest(s), the licensing agency must investigate the underlying facts of the arrest as outlined in Sections 7-1810 and 1811, Arrests-Subsequent to Clearance or Exemption. If the Federal Bureau of Investigation rap sheet contains a conviction, the licensing agency must process it as an initial or subsequent conviction as applicable (Sections 7-1820 and 1821, Convictions Subsequent to Clearance or Exemption). Similarly, if a subject was allowed to work or be present in a facility because the subject received a California clearance and did not disclose any convictions on the Criminal Record Statement (LIC 508) and later the Department receives a Federal Bureau of Investigation rap sheet containing convictions, the licensing agency must process the exemption request as outlined in Evaluator Manual Sections 7-1820 and 1821, Convictions Subsequent to Clearance or Exemption.

If the Department receives a Federal Bureau of Investigation rap sheet with convictions and subsequently the subject receives a California clearance, the individual may not work or be present in a licensed facility until an exemption is granted. A subject may work or be present in a licensed facility with a California clearance when the California clearance was received first.

Effective January 1, 2008, all prospective foster parents must have a completed Federal Bureau of Investigation criminal history check prior to licensure. The Caregiver Background Check Bureau will notify the Regional Office of the completed Federal Bureau of Investigation criminal history check.

If the Federal Bureau of Investigation rap sheet contains a charge that the applicant disputes, there is a central Federal Bureau of Investigation office for record review. The telephone number is (304) 625-3878. There is a charge for the review.

Though the exemption request must be processed, the subject's failure to disclose his/her convictions must be factored into the exemption decision.

Military Offense

Military discipline may or may not require a criminal record exemption. To be viewed as a "criminal conviction for licensing purposes," the elements of the military offense must contain all the elements required for a California crime. Discipline for certain military conduct such as desertion or disobeying an order is not equivalent to any California crime and should not be considered. Other offenses such as murder, robbery, drunk driving, etc. match state offenses and will likely require an exemption, but only if the individual was provided state-level due process; this means a judge or jury, appointed counsel, the right to call and question witnesses, etc.

7-1300 FEDERAL BUREAU OF INVESTIGATION (continued) 7-1300

State-level due process is not provided for discipline classified as non-judicial (Art. 15), or "field grade." The discipline in these cases is imposed by a higher level commander after he/she alone hears the evidence without a jury. In contrast, general, special, and summary courts-martial do provide the same level of due process afforded in state criminal court. General and special courts-martial adjudicate felony type offenses while summary courts-martial adjudicate misdemeanor type offenses.

Thus, an individual adjudicated by general, special, or summary courts-martial for an offense that would be equivalent to a California crime will need an exemption. Absent this criteria, consider a conduct inimical investigation. Note that there are exceptions. For example, a trial by courts-martial may be requested in place of non-judicial discipline. A military conviction in that instance would probably not require an exemption because the conduct itself would likely not be a California crime. When in doubt about the offense or the level of due process afforded, consult with Legal.

7-1400 CHILD ABUSE CENTRAL INDEX 7-1400

Health & Safety Code Sections 1522.1 and 1596.877 require that the Child Abuse Central Index be checked prior to issuing a license to care for children or otherwise approving any subject to care for children. Child Abuse Central Index checks are automatically completed by Department of Justice upon completion of the LIC 9163 Request for LiveScan Service. If a subject was originally fingerprinted for a facility type that did not require a Child Abuse Index check, the subject must then complete the appropriate forms (LIC-198A for Community Care Licensing Division licensed facilities or LIC-198 for County licensed facilities). The licensing agency may issue a criminal record exemption, prior to receipt of the Child Abuse Central Index response.

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 days to six to eight weeks.

If the Child Abuse Central Index check was submitted after January 1, 1999, the licensing agency will receive subsequent reports similar to the rap back service for fingerprint check requests. Child Abuse Central Index check requests submitted prior to January 1, 1999, are only a point in time check. Information regarding Child Abuse Central Index transfers is located in Section 7-1770.

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

Responses listed as 1) will be entered, on the Licensing Information System as "Pending Possible Match." Responses listed as 2) will be entered on the Licensing Information System as "Cleared-No Match." County licensing agencies must categorize responses to their inquiries similarly.

7-1410 STATE LICENSING: CHILD ABUSE CENTRAL INDEX 7-1410

For licensed facilities and TrustLine, Pending Possible Matches are forwarded to the Caregiver Background Check Bureau. The Caregiver Background Check Bureau will notify the subject of the possible match in writing and conduct a preliminary investigation that includes identification, confirmation and obtaining the initial investigation documents from the reporting child protective or law enforcement agency.

If a TrustLine applicant/registrant does not respond or responds with a withdrawal, the file is closed.

For licensed facilities, the investigation continues whether or not a response is received.

The investigation continues even if the subject is currently working in a facility that does not require a CACI check.

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. For TrustLine cases and cases where the subject is now associated to a facility that does not require a CACI check (adult and elderly facilities), the Investigations Branch will conduct the investigation.

7-1420 COUNTY LICENSING: CHILD ABUSE CENTRAL INDEX 7-1420

Pending Possible Matches are forwarded to the County Licensing Agency. The County Licensing Agency will notify the subject of the possible match in writing and conduct a preliminary investigation that includes identification, confirmation and obtaining the initial investigation documents from the reporting child protective or law enforcement agency.

The investigation continues whether or not a response to the notice of investigation is received.

7-1420 COUNTY LICENSING: CHILD ABUSE CENTRAL INDEX (Continued) 7-1420

The County Licensing Agency clears cases where the underlying investigative facts do not support the allegation of abuse. Allegations of child abuse supported by the underlying facts must be investigated. The county licensing agency **must** conduct the Child Abuse Central Index investigation consistent with Evaluator Manual Section 3-2710.

7-1430 CHILD ABUSE CENTRAL INDEX IDENTIFICATION 7-1430

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

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

- Check all identifying information on the Child Abuse Central Index Check form and Department of Justice notification to ensure the subject 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.

- After using the process above to confirm 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 (CACI 7c). For TrustLine cases use either CACI 7a or CACI 7b.

- The notification may be mailed or given only to the subject and must include the name of the reporting agency and date of the report. The subject must be notified prior to the final investigative findings of the licensing agency. The subject is responsible for contacting the reporting agency to obtain a copy of the report. If the licensee questions the subject'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. If the subject responds with a request to close the case, do so. Do not wait for a response from the subject prior to contacting the reporting agency. When the report is received and, if the subject has requested closure, the report will be retained pending a future association. Compare any physically identifying information from these reports to the physical description of the subject seeking a Child Abuse Central Index Check clearance, such as:

  - Age
  - Height and Weight
  - Race
  - Hair color

7-1430 CHILD ABUSE CENTRAL INDEX IDENTIFICATION (Continued) 7-1430

- Eye and skin color
- Birthmarks, tattoos, scars

If the identity of the subject is still questionable, contact the subject by telephone or in person. If the contact is by telephone, ensure you are speaking only to the subject named on the Child Abuse Central Index Check of the possible match since the information is strictly confidential. Inform the person that the licensing agency received information from the Department of Justice and that you are giving them an opportunity to provide any information related to the alleged abuse. If the person says nothing, ask, "Have any child abuse reports ever been made against you?" If the person says no, give partial information such as, "Do you remember an incident investigated by _____ on approximately _____?" Identity is confirmed if the person admits something happened on the date indicated, even if the person does not agree with the allegations in the other agencies' report.

Once identification has been confirmed, conduct the investigation consistent with Evaluator Manual Section 3-2710.

7-1440 CHILD ABUSE CENTRAL INDEX FOLLOW-UP PROCEDURE 7-1440

If eight weeks have passed and the Department of Justice has not responded to the Child Abuse Central Index request, the applicant/licensee may request a follow-up. The applicant/licensee must submit a second LIC-198A or LIC-198 and proof of payment (i.e., copy of a canceled check, bank statement reflecting that the check has cleared or proof from the company issuing the money order). The licensee must indicate on the top right-hand corner of the second request: "Follow-up, Initial Form Submitted on (specify date)." Follow-up requests are given priority by the Department of Justice if eight weeks have elapsed.

7-1450 ADAM WALSH CHILD PROTECTION & SAFETY ACT OF 2006 7-1450

Senate Bill 703 (Chapter 583, Statutes of 2007) requires California to implement the new 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 care licensure and issuance of certificates of approval for certified family homes.

Federal Bureau of Investigation Checks

For applications received on or after January 1, 2008, a completed Federal Bureau of Investigation criminal history check is required **prior** to licensure or certification.

7-1450 ADAM WALSH CHILD PROTECTION & SAFETY ACT OF 2006 7-1450
(Continued)

Out-of-State Child Abuse and Neglect Registry Checks

For license applications received after January 1, 2008, the licensing agency or the foster family agency must ask the applicant and all adults living in the home to identify other states they have lived in within the preceding five years. The revised Out-of-State Disclosure & Criminal Record Statement (LIC 508D) gathers this information. An out-of-state child abuse/neglect check must be completed prior to licensure if the prospective foster parent or any adult in the home has lived in another state within the preceding five years.

Additional information including forms, instructional letters and the current state contact index can be found on the internet at http://ccld.ca.gov under the heading "Adam Walsh Act."

Requests from other state's child welfare agencies checking for a match on the California Child Abuse Central Index are handled by the Department of Justice. However, counties should expect to receive requests from other states for child abuse reports or investigations. These reports or investigations may be released pursuant to Penal Code Section 11167.5(b)(13).

Additional Non-Exemptible Crimes

The Adam Walsh Child Protection and Safety Act of 2006 no longer allows states (of which California was one) to opt out of existing federal background check requirements for foster and adoptive parents. The federal requirements include additional non-exemptible crimes and crimes for which the Department cannot grant an exemption if the subject was convicted of those crimes within the last five years. Assembly Bill 595 (Chapter 246, Statutes of 2009) added the federal background check requirements for foster and adoptive parents to California law.

Effective October 1, 2008, all criminal history checks processed for foster and adoptive parents and all adults residing in the home must comply with the federal requirements.

For the additional non-exemptible crimes, see Evaluator Manual Section 7-1510 for procedures and Section 7-2110 for a list of the crimes. For the crimes for which the Department cannot grant an exemption if the subject was convicted of those crimes within the last five years, see Evaluator Manual Section 7-1511 for procedures and Section 7-2115 for a list the crimes.

7-1460 STATE LICENSING: OUT-OF-STATE CHILD ABUSE / NEGLECT REGISTRY CHECKS 7-1460

Foster Family Homes and Certified Family Home Applicants Only

Regional Offices and Foster Family Agencies:

If the individual discloses an out-of-state residence on the LIC 508D, consult the most current index of out-of-state Child Abuse/Neglect Registries at CCLD's Adam Walsh Web Site: http://ccld.ca.gov under the heading "Adam Walsh Act" to determine that state's requirements for submitting a request for checking their state registry. If the state in which the individual resided does not require their own form, have the individual complete the LIC 198B. If the state requires their own form, download the form and have the individual complete that form. Send the completed LIC 508D, LIC 198B and/or any other forms specifically required by the state (see the state index) to the CBCB, Out-of-State Child Abuse Unit within 10 calendar days.

Send via fax: 916/274-6205
via e-mail: CBCBOutOfStateCACI@dss.ca.gov
via mail: 744 P Street, M.S. 19-62
Sacramento, CA 95814

CBCB Out-of-State Child Abuse (OSCA) Unit

Upon receipt of the LIC 508D and LIC 198B indicating that the individual has resided in another state within the last five years, enter the out-of-state information on the CBC System and the OSCA Database. If the individual is associated with an FFA, send an acknowledgement letter (OSCA 1) to the FFA.

NOTE: In addition to the CBC System, use the OSCA Database throughout the background check process. The OSCA Database captures information about the various states that are contacted, their response time and if the case was referred for investigation.

Determine if the LIC 198B is correctly completed and if the receiving state requires additional or specific information to comply with CBCB's request for information. For example, the state may require use of its own form, notarization or witnessing of the individual's signature, or fee payment. Work with the individual, FFA, or Regional Office in order to compile the appropriate package of documents required by the other state. Upon receipt, update the CBC System and the OSCA Database. If the individual or the FFA does not respond or does not send the required document requested, close the case, and send the OSCA 9 to the FFA.

Send the LIC 198B and all related documents to the state(s) identified with the OSCA Cover 1. If the state requires a fee, complete an AA18 for the amount required, send the completed form to Accounting via Central Operations Branch. When the check is available include it with the completed forms.

7-1460 STATE LICENSING: OUT-OF-STATE CHILD ABUSE / NEGLECT REGISTRY CHECKS (Continued) **7-1460**

If a response is not received within 14 calendar days, send the request again with a "Second Request" stamp. Verify that correct fax numbers/mailing addresses or contacts are being used.

If the state remains unresponsive, notify the Federal Regional Office.

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

Upon receipt of a response from the other state's registry indicating no match, update the CBC System and the OSCA Database and generate a clearance letter (OSCA 3). If the other state indicates that the individual may be matched on their Child Abuse/Neglect Registry, and the investigative report is not included, notify the individual by letter (OSCA 7) that further evaluation is required. The OSCA 7 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 OSCA 7 indicating that they do not want the investigation to continue, update the CBC System and the OSCA Database. Notify the FFA and RO by letter (OSCA 10) of the individual's request that the investigation not continue. Without an out-of-state child abuse clearance the FFA/RO cannot certify or license the individual. The FFA/RO must deny the individual's application for certification/licensure.

If the individual does not respond to the OSCA 7, request the child abuse investigative report from the agency that conducted the original child abuse investigation. Send the OSCA Cover 2 with a copy of the other state's registry response. Follow instructions above for fees and unresponsive agencies. Upon receipt of the investigative report from the reporting agency, review the report and complete a case summary (CBCB Decision Worksheet). Determine if clearance may be granted following standard guidelines.

If clearance is granted, send a clearance letter (OSCA 12) to the individual. Send copies to the FFA and RO. If the case requires additional investigation, refer the case to the Investigation Bureau (IB) designated Out-of-State Child Abuse investigator. Attach all information received to a transmittal form (OSCA IB). After a full investigation has been conducted, IB will return the report to the OSCA Unit with a completed Transmittal Form.

Review the investigation report and complete a case summary. Update the CBC System and the OSCA Database. If a clearance is granted, mail a clearance letter (OSCA 12) to the individual with copies sent to the FFA. If a clearance is not recommended, staff the case with Legal. If a clearance is not granted, send a letter (OSCA 5.0) to the RO regarding the conduct action. Update the CBC System and the OSCA Database indicating that the individual was "Not Cleared Following Inquiry."

7-1460 STATE LICENSING: OUT-OF-STATE CHILD ABUSE / NEGLECT REGISTRY CHECKS (Continued) **7-1460**

Follow standard administrative process if an appeal is received. If, at any point in the process outlined below, a DOJ or FBI rap is received (Arrest Only or Conviction), the analyst will process the exemption or arrest information and consult with Legal staff.

7-1470 COUNTY LICENSING: OUT-OF-STATE CHILD ABUSE / NEGLECT REGISTRY CHECKS **7-1470**

Foster Family Homes Only:

If the foster home applicant indicates on the Out-of-State Disclosure & Criminal Record Statement (LIC 508D) that they have resided in another state within the last five years, have the applicant complete an Out-of-State Child Abuse/Neglect Report Request (LIC 198B) or the state specific form if that state requires their own form. Some states require use of its own form, notarization or witnessing of the individual's signature, or fee payment.

Refer to the most current index of out-of-state Child Abuse/Neglect Registries and their contacts which are available on the CDSS/Adam Walsh Web Site http://ccl.dss.cahwnet.gov. The index indicates if the state requires specific handling of forms, use of notaries, or processing fees. At the same web site under the "Forms" heading, access the template available for creating a county form that gathers the same information as the LIC 198B. Counties choosing to use that template should print it on their letterhead and use it when requesting information from other states.

Send the LIC 198B or the state specific form and all related documents to the state(s) identified with the OSCA Cover 1.

If information is not received within 14 days, send the request again with a "Second Request" stamp. Verify that correct fax numbers/mailing addresses or contacts are being used. If the state remains unresponsive, notify the Federal Regional Office.

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

Upon receipt of a response from the other state's registry indicating No Match, send a clearance letter (OSCA 3).

7-1470 COUNTY LICENSING: OUT-OF-STATE CHILD ABUSE / NEGLECT 7-1470 REGISTRY CHECKS (Continued)

If the other state indicates that the individual may be matched on their Child Abuse/Neglect Registry, and the investigative report is not included, notify the individual by letter (OSCA 7) that further investigation is required. The OSCA 7 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 OSCA 7 indicating that they do not want the investigation to continue, deny the individual's license application.

If the individual does not respond to the OSCA 7, request the investigative report from the agency that conducted the original child abuse investigation. Send the OSCA Cover 2 with a copy of the other state's registry response. Follow instructions above for unresponsive agencies. Follow your county's procedures for processing requests for fees. Upon receipt of the investigative report from the reporting agency, conduct an investigation consistent with Evaluator Manual Section 3-2710 and prepare a case summary.

Determine if a clearance may be granted following standard guidelines. If clearance is granted, notify the individual by letter (OSCA 12).

If the case does not meet guidelines for a clearance, the facts of the case must be reviewed and investigated if necessary. A decision must be made regarding the suitability of the home using California standards and all information available.

If a clearance is not recommended, staff the case with Legal and send the individual a letter (OSCA 5.0).

Follow standard administrative process if an appeal is received.

If, at any point in the process outlined below, a DOJ or FBI rap is received (Arrest Only or Conviction), process the exemption or arrest information and consult with Legal staff.

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 or the Federal Bureau of Investigation in response to a request for a criminal record review by the submission of fingerprints. The licensing agency is responsible for reviewing the arrest and conviction information on the rap sheet and as self-disclosed on the Criminal Record Statement (LIC 508) or TrustLine self disclosure.

7-1500 CRIMINAL OFFENDER RECORD INFORMATION (RAP SHEET) 7-1500

For initial inquiries, the rap sheet may contain:

- All convictions and their related arrests, minor marijuana convictions/arrests over two years old should not be included on the rap sheet
- All arrests with pending dispositions verified within the last 30 days
- Arrest information only of specific, serious crimes. These specific crimes are listed in Evaluator Manual Section 7-2100.
- Warrants
- Non-retainable offenses (A non-retainable offense is a local ordinance infraction or a Vehicle Code violation).

Subsequent rap sheets may contain:

- All convictions and their related arrests, except minor marijuana convictions/arrests over two years old should not be included on the rap sheet
- Arrest information of all crimes (See Evaluator Manual Sections 7-1810 and 1811)
- Warrants
- Non-retainable offenses (A non-retainable offense is a local ordinance infraction or a Vehicle Code violation).

Certain rap sheets may include both a conviction and an arrest with a disposition other than a conviction.

The rap sheet may note multiple arrests for felonies or misdemeanors, yet not show any conviction or disposition information. Under these circumstances, a Judgment of Conviction or other evidence substantiating the disposition of the arrests, such as the subject's written statement, must be obtained by the licensing agency. See Evaluator Manual Sections 7-1535 and 7-1810 for state licensing and 7-1536 and 7-1811 for county licensing. The Department may not use the mere fact of a subject's arrest to support an administrative action against the subject. However, the investigation of the facts leading to the arrest may be appropriate and may lead to an exclusion action based on that underlying conduct.

7-1500 CRIMINAL OFFENDER RECORD INFORMATION (RAP SHEET) 7-1500
(Continued)

Based on policy and procedures approved by the Department of Justice, the licensing agency may discuss all convictions noted on the rap sheet with the subject. It is not necessary to obtain a Judgment of Conviction prior to this discussion. It is also permissible to show the rap sheet to the subject. The subject's rap sheet shall not be shown to the licensee of the facility or the subject's spouse.

An individual, who has been denied a criminal record exemption, has a right to request a copy of his/her state and/or federal rap sheet. To request a copy of his/her rap sheet, the individual must send a written request to the Department within fifteen (15) days of the date of the denial letter. The written request must be dated and signed and must specify where the rap sheet is to be sent.

Licensing staff shall not provide a copy of the rap sheet to the licensee of the facility. See Evaluator Manual Section 7-2010, Confidentiality of Criminal History Information.

If the rap sheet contains any conviction and an arrest for any crime listed on the Non-Exemptible, Exemptible Felonies/Violent Misdemeanor Crimes list (Evaluator Manual Sections 7-2100 or 7-2125):

- State licensing: refer arrest to Investigation Bureau for investigation only if an exemption is requested for the conviction. County licensing: investigate arrest only if an exemption is requested for the conviction.
- hold exemption decision until the investigation is concluded.

For state licensing see Evaluator Manual Section 7-1535 for initial arrest only processing procedures and Section 7-1810 for subsequent arrest only processing procedures. For county licensing see Evaluator Manual Sections 7-1536 and 7-1811.

If the rap sheet contains any conviction and an arrest for a crime not listed in Evaluator Manual 7-2100 and 7-2125:

- process exemption, and
- if arrest later results in a conviction, process exemption.

If the rap sheet contains information related to a military offense see Evaluator Manual Section 7-1300 Federal Bureau of Investigation.

7-1500 CRIMINAL OFFENDER RECORD INFORMATION (RAP SHEET) 7-1500 (Continued)

The Department of Justice should screen out minor marijuana convictions/arrests that are over two years old. If the information is on the rap sheet is shall not be considered to be relevant for any purpose. This is codified by the Marijuana Reform Act of 1977.

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

Health & Safety Code section 11357 (b) possession of 28,5 grams or less
HS Code section 11357(c) possession of over 28.5 grams
HS Code section 11357(d) possession of 28.5 grams or less on K-12 school grounds
HS Code section 11357(e) juvenile in possession of 28.5 grams or less
HS Code 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:

HS Code section 11357 possession
HS Code section 11364 drug paraphernalia
HS Code section 11365 presence where marijuana is being unlawfully used
HS Code section 11550 under the influence of marijuana

7-1510 NON-EXEMPTIBLE CONVICTIONS – INITIAL INQUIRY 7-1510

Statute prohibits the Department from granting a criminal record exemption for specific enumerated crimes regardless of when the conviction occurred. See Evaluator Manual Section 7-2100 for a list of these crimes for all facility types and Section 7-2110 for a list of additional non-exemptible crimes specific to foster and certified family homes.

A subject who has been convicted of any one of these crimes cannot obtain a criminal record exemption. See exception in Evaluator Manual Section 7-1515 Certificate of Rehabilitation.

If a license applicant, spouse or dependent family member who resides in the facility has been convicted of a crime that is non-exemptible, the license application must be denied. The Regional Office or county licensing agency must inform the applicant of the license denial. The Caregiver Background Check Bureau will contact the Regional Office and send a written notification (cbcb6.0) of receipt of a rap sheet with a non-exemptible conviction. The Regional Office and county licensing agency must use the cbcb6.0 Template Letter 1, 1a or 1b, found in the common library as a guide to draft a letter to the license applicant and the subject. The letter to the subject must identify the documents or materials relied upon to make the determination. This will usually be the state summary criminal history information received from the Department of Justice. In addition, the letter must list the non-exemptible conviction(s) and if known, the approximate date and court location where the conviction occurred. (County licensing agencies – see Evaluator Manual Section 7-1000 for letter modification instructions).

7-1510 NON-EXEMPTIBLE CONVICTIONS – INITIAL INQUIRY (Continued) **7-1510**

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within thirty (30) days. The response form tells the Caregiver Background Check Bureau if the applicant is appealing the denial. If the applicant appeals the denial, the Regional Office must send the Caregiver Background Check Bureau the appeal letter, a copy of the LIC 508 (if not previously sent) and a copy of the LIC 200 with the completed response form.

If the denial is based solely on the conviction of the non-exemptible crime, and the applicant appeals, the Caregiver Background Check Bureau or county licensing agency will prepare the Statement of Facts.

If a potential employee has been convicted of a crime that is non-exemptible, the Caregiver Background Check Bureau or the county licensing agency must send separate, concurrent letters (cbcb6.1) to the licensee and the subject notifying them that the subject's crime is non-exemptible and that they may not work in, reside in, nor have contact with clients of any community care facility. (County licensing agencies – see Evaluator Manual Section 7-1000 for letter modification instructions).

If a TrustLine applicant has been convicted of a crime that is non-exemptible, the Caregiver Background Check Bureau will send a notice (TL-11) to the subject informing them that they may not provide care.

If the subject is associated to any facility type other than a foster family or certified family home, and the crime for which he/she has been convicted does not appear on the non-exemptible crimes list, the subject has the right to apply for an exemption. See Evaluator Manual Section 7-1710 Exemption Requests.

If the subject is associated to a foster family or certified family home, and the crime for which he/she has been convicted does not appear on either the non-exemptible crimes list in Evaluator Manual section 7-2100 or the federal non-exemptible crimes list section 7-2110, a further check must be completed before it can be determined if the crime is exemptible. See Evaluator Manual section 7- 1511, Federal 5-Year Ban.

7-1511 FEDERAL 5-YEAR BAN – INITIAL INQUIRY 7-1511

Foster Family Homes and Certified Family Homes Only

Statute prohibits the Department from granting a criminal record exemption for specific felonies if the individual was convicted of that felony within the last five years. See Evaluator Manual Section 7-2115 for a list of crimes likely to meet the definition of a 5-year ban crime.

7-1511 FEDERAL 5-YEAR BAN – INITIAL INQUIRY (Continued) **7-1511**

If a license/certification applicant, spouse or any adult who resides in the home has been convicted of any one of these crimes within the last five years, he/she cannot obtain a criminal record exemption. If the individual is an applicant, spouse or dependent family member the license/certification must be denied or revoked. If the individual is a non-dependent family member or a non-client adult resident, the license/certification must be denied or revoked if the individual continues to reside in the home.

If the license denial/revocation is based solely on the conviction, and the applicant appeals, the Caregiver Background Check Bureau or county licensing agency will prepare the Statement of Facts.

If the subject's crime does not appear on the state non-exemptible crimes list (Evaluator Manual Sections 7-2100 or 7-2110) and does not meet the definition of a federal non-exemptible or 5-year ban crime (Evaluator Manual Sections 7-2110 and 7-2115), the subject has the right to apply for an exemption. See Evaluator Manual Section 7-1710 Exemption Requests.

Foster Family Home License Applicants / Licensees / Dependent Family Members:

The Regional Office or county licensing agency must inform the applicant/licensee of the license denial/revocation. The Caregiver Background Check Bureau will send the Regional Office a written notification (cbcb22.5 FN). The Regional Office and county licensing agency must use the cbcb22.5 Template Letter 1 or 1a & 1b (found in the common library) as a guide to draft a letter to the license applicant and the subject and Template letter 2 or 2a & 2b to draft a letter to the licensee and the subject. The letter to the subject must list the crime, the date of the conviction and the court location where the conviction occurred. (County licensing agencies – see Evaluator Manual Section 7-1000 for letter modification instructions.)

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within thirty (30) days. The response form tells the Caregiver Background Check Bureau if the applicant is appealing the denial. If the applicant appeals the denial, the Regional Office must send the Caregiver Background Check Bureau the appeal letter, a copy of the LIC 508D (if not previously sent) and a copy of the LIC 283 with the completed response form.

Foster Family Home Non-Dependent Family Members / Non-Client Adult Residents:

The Caregiver Background Check Bureau will send the Foster Family Home applicant/licensee and the subject a written notification (cbcb22.5ffh, cbcb22.5ffh C). The notice to the subject (cbcb22.5ffh C) will list the crime, the date of the conviction and the court location where the conviction occurred. A copy of the notices will be sent to the Regional Office. If the applicant/licensee allows the individual to move into or remain in the home, the Regional Office must initiate an administrative action to deny or revoke the license.

7-1511 FEDERAL 5-YEAR BAN – INITIAL INQUIRY (Continued) **7-1511**

Certificate of Approval Applicants / Certified Foster Parents:

The Caregiver Background Check Bureau will send the foster family agency and the subject written notification (cbcb22.5ffa, cbcb22.5ffa C). The letter to the subject (cbcb22.5ffa C) will list the crime, the date of the conviction and the court location where the conviction occurred.

A copy will be sent to the Regional Office responsible for monitoring the foster family agency.

7-1515 CERTIFICATE OF REHABILITATION – HEALTH AND SAFETY CODE 1522 **7-1515**

An exemption may be granted for subjects convicted of specific violent felonies covered in Health & Safety Code Section 1522. All criteria for evaluation of subjects convicted of violent felonies should be followed for these subjects, including, approval by Branch Chief or county equivalent. This exception to the non-exemptible listing only applies if all of the following criteria are met:

(a) The subject is associated with a facility covered under Health & Safety Code Section 1522; and

(b) The subject was convicted of one or more of the following violent felonies as specified in paragraphs (1), (2), (7) or (8) of the Penal Code Section 667.5(c):

(i) Murder or voluntary Manslaughter – Except for subjects associated to foster and certified family homes;

(ii) Mayhem;

(iii) Any felony punishable by death or life in prison; or

(iv) Any felony in which the subject inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the subject uses a firearm which use has been charged and proved in Section 12022.5 or 12022.55.

(c) The subject has been rehabilitated as provided in Penal Code Section 4852.03, has maintained the conduct required in Penal Code Section 4852.05 for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, **or** if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

7-1515 CERTIFICATE OF REHABILITATION 7-1515
HEALTH AND SAFETY CODE 1522 (Continued)

Additionally, if a subject who is associated with a facility covered under Health & Safety Code Section 1522 has been convicted of second degree robbery and obtained a Certificate of Rehabilitation, as provided in paragraph (c), he or she is eligible for an exemption for any facility type covered under Health & Safety Code Section 1522. This limited exception is a result of a decision issued on June 22, 2006, in Glesmann v. Rita Saenz, Director of the Department of Social Services, et al. 140 Cal.App.4th 960 lawsuit.

A subject must provide a copy of the Certificate of Rehabilitation with a filed stamp from the Superior Court. Before granting or denying an exemption under this section, legal counsel should be consulted.

An exemption granted under this section cannot be transferred to a Residential Care Facility for the Elderly (RCFE), Residential Care Facility for the Chronically Ill (RCFCI), any child care facility or to the TrustLine Registry.

7-1520 FELONY CONVICTIONS – INITIAL INQUIRY 7-1520

A felony is an entry on the rap sheet identified as such or identified by the imposed sentence – "punishable by state prison". The licensing agency must send separate, concurrent letters (cbcb2) to the licensee and the subject notifying them that the subject has a felony conviction and that they must request a criminal record exemption. In TrustLine cases, the TL-09 letter is sent to the applicant. (County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions).

7-1530 MISDEMEANOR CONVICTIONS – INITIAL INQUIRY 7-1530

A misdemeanor conviction may be identified on the rap sheet as such or identified by the sentence, "punishable by not more than one year in jail or fine". If the subject's criminal history does not meet the simplified exemption criteria (See Evaluator Manual Section 7-1720) the licensee and the affected subject must be notified concurrently via separate letters (cbcb2) that the subject has a conviction and that a criminal record exemption is required (See Evaluator Manual Sections 7-1700 through 7-1770 for information on exemptions). In TrustLine cases, the TL-09 letter is sent to the applicant. (County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions).

7-1535 STATE LICENSING: ARREST ONLY – INITIAL INQUIRY 7-1535

Licensing and TrustLine Cases - Initial Inquiries

If the rap sheet indicates that the person is awaiting trial, close the case and send the CBCB 9.1 or TL 10.1 notice. See Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1812.

If a subject's rap sheet contains only arrest information (no convictions), the subject must be issued a Department of Social Services clearance, (Evaluator Manual Reference Material, Background Check Procedures, section 7-1600) provided:

- The arrest has not subsequently turned into a conviction.
  See Evaluator Manual Reference Material, Background Check Procedures, section 7-1700

- The subject does not have a previously granted exemption.
  See Evaluator Manual, Reference Material, Background Check Procedures, section 7-1810 Note: A subject with an exemption may come back through the system as an "initial inquiry" if the subject reprinted instead of transferring their exemption or if the subject was disassociated from a facility for over 3 years.

- The subject does not have an Administrative Action flag in the Caregiver Background Check database which would prevent the issuance of a clearance
  See Evaluator Manual Reference Material, Background Check Procedures, section 7-1900

If all of the above applies, send a Criminal Record Clearance (CBCB 1) or TrustLine Registry Approval (TL 38) notice.

After a clearance is issued, review the rap sheet and determine the crime type of each arrest.

Arrests For Crimes On The Following Lists Must Be Referred To Investigations
(After disposition is checked. See below)

- Non Exemptible crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100)

- Additional Arrests Requiring Investigation (Evaluator Manual, Reference Material, Background Check Procedures section 7-2125):

  Penal Code Sections 245, 273a(b) or 273a(2) prior to January 1 1994, or 273.5

7-1535 STATE LICENSING: ARREST ONLY- INITIAL INQUIRY 7-1535
(Continued)

- For Foster and Certified Foster Homes, Federal Non-exemptible (Evaluator Manual Reference Material, Background Check Procedures sections 7-2110) and Federal 5 Year Ban (Evaluator Manual Reference Material, Background Check Procedures sections 7-2115)

Processing Procedures for Above Listed Arrests

Contact the licensee or license applicant to find out if he/she is still interested in employing the subject. If the licensee is not, close "Agency Initiated."

Check available online court databases in the county where the subject was arrested for any additional or updated disposition information. The disposition determines how the case will be processed.

►Arrests With The Following Dispositions Are **NOT** To Be Referred to Investigations:

☑ All Released / Detention only / including, but not limited to 849(b) Penal Code

Any case in which a person is arrested, released and no accusatory pleading is filed charging him with an offense, the arrest is no longer an arrest, but a detention only.

Arrests that are released by law enforcement per 849(b) or 859.5 Penal Code (Prosecutor Reject).

Prosecutor Releases (Rejects) fall under 849.5 Penal Code. These are arrests without filing of accusatory pleading. The arrest is deemed a detention.

Rap Sheet Entry Example:

- Pros Rel – Det Only – Reason
  This translates to Prosecutor Release – Detention Only – For whatever reason such as Lack of Evidence

☑ Finding of Factual Innocence
☑ Infraction
☑ Conviction

7-1535 STATE LICENSING: ARREST ONLY- INITIAL INQUIRY 7-1535
(Continued)

- If the subject was convicted of a non-exemptible crime (Evaluator Manual Reference Material, Background Check Procedure, Sections 7-2100 and 7-2110 for Foster and Certified Family Homes), send the applicable Non-Exemptible Conviction notice (CBCB 6.0, 6.1 and, 6.1 C; 6.1ffa and 6.1ffa C; 6.1r; 6.2), or the Non-Exemptible Conviction Application Denial (TL-11) notice.

- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► Arrests with the following dispositions **MAY** be referred to investigations:

☑ Diversion

See Evaluator Manual Reference Material, Background Check Procedures, section 7-1540.

In addition, an arrest for a crime not listed in the Non Exemptible crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100), the Additional Arrests Requiring Investigation crimes list (Evaluator Manual Section 7-2125) or, for Foster Family and Certified Family Homes, Federal Crimes lists (Evaluator Manual Sections 7-2110 and 7-2115) **may** be referred to the Investigations Bureau for investigation, if the Caregiver Background Check Bureau determines that, based on the known facts of the case, the subject's conduct or character may pose a risk to the health and safety of clients in care. Referral for these arrests requires manager and legal approval. Referrals must be submitted on a Service Request transmittal rather than an orange Arrest-only Transmittal.

► Arrests with the following dispositions **MUST** be referred to investigations:

☑ Complainant Refused Prosecution.
☑ Bail Exonerated.
☑ All Juvenile arrest only entries including those where minor was released to parent or guardian.
☑ Acquitted or Not Guilty.
☑ Prosecutor filed a criminal complaint but later dismissed it.
☑ Any other disposition not exempted above.

If an investigation is warranted, follow process in Arrests – Subsequent Inquiry (Evaluator Manual Reference Material, Background Check Procedures, section 7-1810).

7-1536 COUNTY LICENSING: ARREST ONLY – INITIAL INQUIRY 7-1536

If the rap sheet indicates that the person is awaiting trial, close the case and send the CBCB 9.1. See Evaluator Manual, Reference Material, Background Check Procedure, Section 7-1812.

If a subject's rap sheet contains only arrest information (no convictions), the subject must be issued a County Licensing Agency clearance (Evaluator Manual Arrests For Crimes on the Following Lists Must Be Investigated: (After disposition is checked. See below) Section 7-1600), provided:

- The arrest has not subsequently turned into a conviction
  See Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1700

- The subject does not have a previously granted exemption
  See Evaluator Manual Reference Material, Background Check Procedures, Section 7-1810

- The subject has not had an Administrative Action which would prevent the issuance of a clearance
  See Evaluator Manual Reference Material, Background Check Procedures, Section 7-1900

- The rap sheet does not indicate that the subject has an outstanding warrant or pending criminal trial
  See Evaluator Manual Reference Material, Background Check Procedures, Section 7-1812

If all of the above applies, send a criminal record clearance notice.

After a clearance is issued, review the rap sheet and determine the crime type of each arrest.

Arrests For Crimes on the Following Lists Must Be Investigated:
(After disposition is checked. See below)

- Non-Exemptible (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100)

- Additional Arrests Requiring Investigation (Evaluator Manual, Reference Material, Background check Procedures, Section 7-2125):

  Penal Code Sections 245, 273a(b) or prior to January 1, 1994, 273a(2)

7-1536 COUNTY LICENSING: ARREST ONLY – INITIAL INQUIRY 7-1536
(Continued)

For Foster and Certified Family homes, in addition to the above:

- Federal Non Exemptible (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2110) and

- Federal 5 Year Ban (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2115)

Processing Procedures For Above Listed Arrests

Check available online court databases in the county where the subject was arrested for any additional or updated disposition information. The disposition determines how the case will be processed.

►Arrests With The Following Dispositions Are NOT To Be Investigated:

☑ All Released Detention only / including, but not limited to 849(b) Penal Code

Any case in which a person is arrested, released and no accusatory pleading is filed charging him with an offense, the arrest is no longer an arrest, but a detention only.

Arrests that are released by law enforcement per 849(b) or 859.5 Penal Code (Prosecutor Reject).

Prosecutor Release (Reject) falls under 849.5 Penal Code. These are arrests without filing of accusatory pleading. The arrest is deemed a detention.

Rap Sheet Entry Example:

- Pros Rel – Det Only – Reason
  This translates to Prosecutor Release – Detention Only – For any reason such as Lack of Evidence

☑ Finding of Factual Innocence
☑ Infraction
☑ Conviction

- If the subject was convicted of a non-exemptible crime (Evaluator Manual Section 7-2100 and 7-2110 for Foster Family Homes), send the applicable Non-Exemptible Conviction notice (CBCB 6.1 and, 6.1C or 6.2)

- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption

► Arrests with the Following Dispositions MAY Be Investigated

☑ Diversion

See Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1540

7-1536 COUNTY LICENSING: ARREST ONLY – INITIAL INQUIRY 7-1536
(Continued)

In addition, an arrest for a crime not listed in the Non Exemptible crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100), the Additional Arrests Requiring Investigation crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2125) or, for Foster Family and Certified Family Homes, Federal Crimes lists (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2110 and 7-2115) **may** be investigated, if the County Licensing Agency determines that, based on the known facts of the case, the subject's conduct or character may pose a risk to the health and safety of clients in care.

► Arrests With The Following Dispositions MUST Be Investigated:

- ☑ Complainant Refused Prosecution
- ☑ Bail Exonerated
- ☑ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☑ Acquitted or Not Guilty
- ☑ Prosecutor filed a criminal complaint but later dismissed it
- ☑ Any other disposition not exempted above

If an investigation is warranted, follow process in Arrests – Subsequent Inquiry (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1810)

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT 7-1540

Diversion programs are detailed in the Penal Code. The specific diversion programs and their criteria are listed below. 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 or arrest only investigation may be necessary. No action may be needed if the case did not result in a conviction, and the individual's success in the particular diversion program prevents the Department from proving the conduct. See diversion program types below.

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.

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

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued) **7-1540**

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 the exemption request.

Be sure to check the Penal Code section to ensure that there have been no changes to the diversion program statute. Check with the consulting attorney if necessary.

Identify Diversion Program and the Individual's Progress:

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 (Manual Letter) 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 department from proving conduct inimical to exclude. These are often referred to as District Attorney diversion, county diversion or deferred prosecution. Determine 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. Contact the 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 or exclude.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued) **7-1540**

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 prior to successful completion. After successful completion, the investigation may continue as detailed in D.

D. 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. Note that after successful completion, the record of arrest cannot be used to start an investigation or refresh a witness' memory.

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 or exclude.

A. Process as a clearance if the person has no convictions.

B. Process as a conviction if the person failed the program and is convicted.

C. Process as an arrest-only investigation at any time prior to successful completion. After successful completion, the investigation may continue as detailed in D.

D. Process as an arrest-only investigation after successful completion only if evidence independent of the arrest record exists to prove conduct inimical. Note that after successful completion, the record of arrest cannot be used to start an investigation or refresh a witness's memory. Check for any Child Abuse Central Index hits.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued) **7-1540**

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. The department 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 or exclude.

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 prior to successful completion. After successful completion, the investigation may continue as detailed in D.

D. 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. Note that after successful completion, the record of arrest cannot be used to start an investigation or refresh a witness's memory.

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 or exclude.

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 prior to successful completion. After successful completion, the investigation may continue as detailed in D.

D. 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. Note that after successful completion, the record of arrest cannot be used to start an investigation or refresh a witness's memory.

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.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued) **7-1540**

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 or exclude.

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 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. Note that after successful completion, the record of arrest cannot be used to start an investigation or refresh a witness's memory. Check for any Child Abuse Central Index hits.

D. Process as a clearance if the person successfully completed the diversion program, the criminal charge was dismissed, and the case is inappropriate for an arrest-only investigation or there is insufficient evidence to prove the conduct without the documents which the completed diversion has caused to be unavailable for this purpose.

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 successfully 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 or exclude. Although disclosure of the arrest and conviction is required for licensure, neither can be used to deny or exclude without the individual's consent.

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.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued) **7-1540**

B. Issue a clearance after successful~~ly~~ completion and dismissal of the conviction. Investigation into the conduct may be initiated or processed as follows:

1. The department may process as an arrest-only investigation as a backup to the criminal conviction at any time prior to successful completion. After successful completion, the investigation may continue as detailed in 2.

2. 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. Note that after successful completion, the record of arrest cannot be used to start an investigation or refresh a witness's memory.

7-1550 PARDONS, SET-ASIDE/DISMISSED AND *NOLO CONTENDERE* PLEAS **7-1550**

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.

However, convictions that have been set aside or dismissed per **Section 1203.4 or 1203.4a** of the Penal Code are still considered convictions for exemption processing purposes pursuant to these Penal Code sections and the Health & Safety Code. When the court sets aside or dismisses convictions based on these Penal Code sections it could mean for example, that the convicted subject has satisfactorily fulfilled the probation and has applied to the court to set aside/dismiss the plea and/or the verdict. It does not mean that the subject was never convicted of the crime.

Any conviction rendered as a result of a *nolo contendere* plea shall be considered a conviction and evaluated pursuant to standard policies and procedures.

7-1600 DEPARTMENT OF SOCIAL SERVICES CLEARANCE - COUNTY LICENSING AGENCY CLEARANCE **7-1600**

Arrests

Statute provides that a person subject to a criminal record background check will obtain a criminal record clearance if he/she has no felony or misdemeanor convictions reported by the California Department of Justice or the Federal Bureau of Investigation. That is, persons with a criminal history record containing only arrest information shall be issued a clearance. Persons with only arrest information on their criminal history record may work, reside or be present in a facility even if their criminal history record contains arrest information that requires investigation (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1535 and 7-1536). A clearance cannot be delayed while arrest information is investigated.

7-1600 DEPARTMENT OF SOCIAL SERVICES CLEARANCE - COUNTY LICENSING AGENCY CLEARANCE (Continued) 7-1600

Notification of a Department of Social Services Clearance (CBCB 1 or TL 38) must be sent to the licensee or TrustLine applicant only. Notification of a County Licensing Agency Clearance must be sent to the licensee only. County licensing agencies see Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1000 for letter modification instructions.

Infractions and Citations

For licensing purposes, statute provides that minor infractions and citations are convictions that do not require an exemption.

If a subject's criminal history record contains only minor infractions or a citations, and the subject has not been granted an exemption for other convictions, the subject must be granted a licensing agency clearance. Notification of a Department of Social Services Clearance (CBCB 1 or TL 38) must be sent to the licensee or TrustLine applicant only. Notification of a County Licensing Agency clearance must be sent to the licensee only. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions

7-1700 EXEMPTION 7-1700

An exemption is a Department authorized written document that "exempts" a subject from the requirement of having a criminal record clearance (Evaluator Manual Section 7-1100, Criminal Record Clearance).

A subject who has been convicted of a crime (other than a minor traffic violation or a marijuana-related conviction more than two years old) is disqualified from holding a license or being present in a licensed facility unless the subject is granted a criminal record exemption by the licensing agency.

An exemption may be granted if the subject presents the licensing agency with substantial and convincing evidence to support a reasonable belief that the person is of good character and is not a threat to the well being of clients.

Persons convicted of certain crimes specified in statute cannot obtain an exemption. See Evaluator Manual Section 7-2100 for a list of the crimes that are non-exemptible.

Subjects convicted of crimes that are *not* classified as non-exemptible may request an exemption. The following are the four types of exemption processes used by the Community Care Licensing Division:

Simplified Exemption - The simplified exemption process may be used for subjects convicted of one nonviolent misdemeanor that is over five years old. The simplified exemption process entails only an examination of the convicted person's rap sheet. The simplified exemption does not include the involvement of the subject and/or licensee. (See Evaluator Manual Section 7-1720, Simplified Exemption).

7-1700 EXEMPTION (Continued) 7-1700

Standard Exemption - The standard exemption process is used to evaluate all felony convictions and those misdemeanors that do not qualify for a simplified exemption. This process requires sending the applicant/licensee an exemption needed notice (cbcb2, 2ffa, 2.1, 2.1ffa, 2.2, 3, 3ffa, 3.1, 3.1ffa) and concurrently sending the affected subject a similar notice to their address on record (cbcb2C, 2ffa C, 2.1C, 2.1ffa C, 2.2C, 3C, 3ffa C, 3.1C, 3.1ffa C). See Evaluator Manual Section 7-1710 Exemption Request and Section 7-1730 Standard Exemption. See Appendix H, for notice samples.

Individual Exemption - If the licensee elects not to pursue an exemption on behalf of an affected subject and terminates the subject's employment, residency, or chooses not to hire the individual after receiving a notice from the Department regarding the subject's criminal history, the affected subject has the right to request an individual exemption on their own behalf. An approved individual exemption is valid for two years without a facility association (except administrator certificate holders). A licensing agency may associate the subject to a facility upon receipt of a written request from the hiring licensee/applicant.

The request must be on a Criminal Record Exemption Transfer Request (LIC 9188). The decision to associate should be based upon the criteria governing transfer of an exemption, i.e., position responsibilities, type of clients. (See Evaluator Manual Section 7-1770 Exemption Transfer).

Conditional Exemption - A conditional exemption places a restriction or condition on a standard exemption which limits client contact or restricts their role in some way, e.g., subject is not to dispense prescription medications to a client or not to transport clients (See Evaluator Manual Section 7-1731.1, Conditional Exemption).

7-1710 EXEMPTION REQUEST 7-1710

A subject 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. Upon receipt of a rap sheet that includes convictions that require a standard exemption, provided there are no convictions for non-exemptible crimes, applicant/licensee must be sent a notice informing them that the subject must obtain a criminal record exemption.

For Initial Inquiries

- Send either the cbcb2, 2ffa, or 2.2.
  These letters do not require that the subject be removed because, as required by clearance prior to work, the subject cannot be working in the facility or residing in the home until they receive a clearance or a criminal record exemption.

- Concurrently, send the affected subject a corresponding notice (cbcb2C, 2ffa C, 2.2C) to their address on record informing them of the same. This notice must include a list of his/her conviction(s).

7-1710 EXEMPTION REQUEST (Continued) **7-1710**

Subsequent Reports - for previously cleared or exempted subjects

- If the conviction is for a crime that is not a felony or not a violent misdemeanor, send the cbcb2.1, 2.1ffa, and/or the 2.2.
  These letters allow the person to remain in the home/facility provided they request an exemption.

- If the subsequent report indicates that the subject has been convicted of a felony or a violent misdemeanor and the subject previously had a clearance, send either a cbcb3, or the 3ffa. If the subject had a previous exemption, send the 3.1 or 3.1ffa.
  These letters require that the licensee remove the subject from the home until an exemption is approved.

- Concurrently, the affected subject must be sent a corresponding notice (cbcb2.1C, 2.1ffa C, 2.2C, 3C, 3ffa C, 3.1C, 3.1ffa C) to their address on record informing them of the same. This notice must include a list of his/her conviction(s).

If the applicant/licensee still wishes to hire the subject or if subject is still employed by or residing in the facility, the applicant/licensee must request an exemption on behalf of the subject. If the applicant/licensee chooses not to request an exemption and either does not wish to hire, terminates the subject's employment or removes the subject from the facility after receiving an exemption needed notice from the licensing agency, the subject has the right to request an exemption on their own behalf.

The applicant/licensee or the subject 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.

If the exemption request is for an applicant, licensee, spouse or dependent family member and a complete exemption request is not submitted within 45 days of the date of the notice, the Department may deny the exemption.

If the exemption request is for an employee or resident other than a spouse or a dependent family member and a complete exemption request is not submitted within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

7-1720 SIMPLIFIED EXEMPTION 7-1720

The simplified exemption process can only be used for approvals. The simplified exemption process is a review based only on the examination of the convicted person's rap sheet. This process is designed to expedite the exemption decision by the licensing agency. The licensing agency has discretion to require a criminal record exemption using the standard exemption process even if the conviction(s) meet the simplified exemption criteria. If there is any doubt, use the standard process. The simplified exemption review does not necessitate the involvement of either the subject or the licensee. Unlike standard exemptions, a simplified exemption does not need to be requested.

Use of the simplified process must be indicated on Licensing Information System (LIS) or appropriate county licensing tracking systems. The licensing agency must notify the licensee of the approval by letter (cbcb4.0 or 4.1). See Evaluator Manual Section 7-1740, Notification of the Exemption Decision. In TrustLine cases, the TL-35 letter is sent to the applicant. (County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions). A simplified exemption process may be used when all Simplified Exemption Approval Criteria are met.

Simplified Exemption Approval Criteria:

(A) The subject does not have a demonstrated pattern of criminal activity;

(B) The subject has no more than one conviction;

(C) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to a subject; and

(D) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

If the probation was informal or unsupervised at least five years must lapse since the date of conviction. Any exceptions to the criterion for persons on unsupervised probation must be documented and approved by a Unit Manager, or County equivalent.

Examples of crimes that may qualify for a simplified exemption:

Failure to Appear
Drive with Suspended License
Possession of Stolen Vehicle
Drive without License
Petty Theft
Fraud to Obtain Aid (misdemeanor)
Receive Stolen Property
Defrauding Innkeeper
Perjury
Contempt / Disobey Court Order
Shoplifting
Providing False ID to Peace Officer
Gambling
Littering
Public Intoxication
Illegal Entry / Deportation
Public Nuisance
Possession of Open Container in Vehicle
Carry Loaded Firearm
Insufficient Funds
Unlawful Assembly / Picketing

7-1720 SIMPLIFIED EXEMPTION (Continued) **7-1720**

Additional crimes that may qualify for a simplified exemption provided the conviction was not pled down from a more serious offense:

✓Disturbing the Peace/Making Loud or Unreasonable Noise
✓Disorderly Conduct
✓Trespassing
✓Vandalism
✓Annoying Phone Calls
✓Possession of a Controlled Substance
✓Loitering
✓Obstruct Public Officer
✓Fighting in Public Place
✓Prostitution

Subjects with a single DUI conviction that is more than 5 years old may qualify for a simplified exemption. Check DMV records to determine if there have been other arrests or citations of concern. If there is no other record, a condition restricting the subject from transporting clients is not necessary, the case may be processed as a simplified exemption. DUIs that involve great bodily harm or multiple DUI convictions will require a standard exemption.

The simplified exemption process can<u>not</u> be used in the following situations:

- If there is any conviction within the preceding five years. (If a violation involved Juvenile Court adjudication while the person was under the age of 18 years, it is not a conviction and cannot be used as such as a basis to deny an application or prohibit employment. It may, however, be handled as an arrest only or conduct matter.)
- If there is any arrest within the last five years that meets the investigation criteria.
- If there is an arrest for a non-exemptible crime at any time. See Evaluator Manual Section 7-2100.
- If the subject has any felony or violent misdemeanor convictions.
- If the conviction status is not indicated, it appears that the crime is a felony based on the sentence. If during the standard exemption process it becomes evident that the crime was a misdemeanor and other simplified exemption criteria is met, you may revert to the simplified exemption process.
- The rap sheet indicates that the subject was initially charged with a felony, or a crime listed in Evaluator Manual Section 7-2125 but the charge was reduced and the person was subsequently convicted of a misdemeanor.
- The subject is currently on supervised or formal probation.
- The subject already has an exemption for another conviction(s).
- There has been an Administrative Action taken against the subject. CCLD check the LIS - Personnel History Report. County licensing check the County Licensing Administrative Action Personnel Flagging Attachment website. You may obtain the complete web address from your county liaison.

7-1730 STANDARD EXEMPTION 7-1730

Upon receiving a rap sheet that contains a conviction that does not meet the simplified exemption criteria (Evaluator Manual Section 7-1720) and is not on the non-exemptible crimes list, the licensing agency must immediately notify the licensee and the affected subject with separate, concurrent letters indicating the need for an exemption (See Evaluator Manual Section 7-1730, Standard Exemption). A subject 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. The Health & Safety Code specifies that upon notification from the licensing agency, for subjects who have been allowed in the facility, the licensee shall act to either: (1) terminate the subject's employment, remove the subject from the facility; or (2) seek an exemption (See Evaluator Manual Section 7-1710 Exemption Request).

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 only be made after all submitted documentation has been reviewed.

Exemption Needed notices require that the following be submitted:

1. A written request for an exemption from the licensee/applicant on behalf of the subject.

2. A detailed description of what the subject will be doing at the facility. A duty statement or job description will suffice if the licensee/license applicant submits one.

3. A written request for an exemption from the affected subject on his/her own behalf if the licensee chooses not to request an exemption.

4. A signed copy of the original Criminal Record Statement (LIC-508 or TLR-508).

5. A written statement signed by the subject 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 subject must also describe what he/she has done since the conviction to ensure he/she will not be further involved in criminal activity.

6. Documentation (Minute Order, Judgment of Conviction, court docket or transcript, or a letter from the Probation Department) indicating that the subject's current or last period of probation was unsupervised or that the supervised probation was successfully completed.

7. Verification (certificates) of any training, classes, courses, treatment or counseling completed.

7-1730 STANDARD EXEMPTION (Continued) **7-1730**

8. Three signed character references including the telephone number and address of the person writing the reference. Character references must be current and cannot be from the subject's relatives or family members nor from employees or clients associated with the licensed facility. The character references must be on Reference Request form (LIC 301 E).

9. A copy of all police reports involving the crime(s) for which the subject was convicted, or a letter from law enforcement stating that a report no longer exists.

10. The subject's current mailing address and telephone number.

7-1731 EVALUATION OF STANDARD EXEMPTION 7-1731

The licensing agency must evaluate each exemption request according to criteria contained in Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871 as well as Regulations Sections 80019.1, 82019.1, 85619.1, 89219.1, 87356, 87819.1, 101170.1 and 102370.1.

The decision to approve or deny an exemption must be based upon a comprehensive review of all available information, and the information specified in Evaluator Manual Section 7-1730, Standard Exemption.

To approve an exemption, the licensing agency must evaluate the possibility of potential risk or threat to clients in care. Factors such as lack of remorse, honesty, integrity or education, etc., are not automatic grounds for denial if there is other substantial and convincing evidence to grant an exemption, although those issues may go to lack of rehabilitation. 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.

Use this step-by-step process to review a standard exemption request: (This process assumes that a standard exemption was requested and that all the information specified in Evaluator Manual Section 7-1730, Standard Exemption has been submitted).

Several factors must be considered in evaluating an exemption request. These factors are broken into 3 main categories:

1. CRIME TYPE
2. REHABILITATION
3. CLIENTS/FACILITY TYPES

1. CRIME TYPE

Check the action section of the rap sheet (right hand column) to determine whether a conviction was a misdemeanor or felony. If still in doubt, check the appropriate code book (e.g., Penal Code, Health & Safety Code, etc.) to determine the sentence that can be imposed for that crime. Some crimes are always felonies while others are always misdemeanors; there are also crimes which may be sentenced as either a felony or a misdemeanor. If the penalty specified in the code is solely confinement in state prison, the crime is a felony. If the code section specifies that only county jail and/or a fine may be imposed, the crime is a misdemeanor. If the crime is one which may be either a felony or misdemeanor, looking at the sentence imposed can sometimes give direction. If the subject was sentenced to the county jail with no probation, it is likely the person was convicted of a misdemeanor. If the probation is longer than three years, the person may have been convicted of a felony. If a subject has a state prison sentence stayed and jail time imposed, it is a felony. Only felonies may receive a state prison sentence, while both misdemeanors and many felonies can receive jail time.

For example, a subject may have been initially arrested and charged with attempted murder (felony) and subsequently pled guilty and was convicted of a misdemeanor assault. The licensing agency may take action (application denial, revocation, temporary suspension, temporary restraining order, or exclusion) based upon conviction or arrest (conduct inimical) information. However, a decision to deny an exemption must be based on conviction information only. (See Evaluator Manual Enforcement Actions, Administrative Actions Section 1-1000)

Review each conviction closely. Confirm that the subject was not convicted of a non-exemptible crime. A subject convicted of a non-exemptible crime may not be considered for an exemption except under specific narrow circumstances where a certificate of rehabilitation has been issued (See Evaluator Manual Section 7-1515). It may be difficult to determine whether a conviction is non-exemptible because of a changed or repealed Penal Code number. If this is the case, counties must contact their county liaison or their Legal Consultant at the California Department of Social Services Legal Division for clarification. In addition, consider ordering a Judgment of Conviction.

Compare the Penal Code number for each conviction and arrest in the action column (or disposition column on older rap sheets) with the corresponding number in the appropriate code book to determine the nature of the charge and/or conviction.

Crimes can be categorized as:

- Against property (e.g., fraud, etc.)
- Against persons (e.g., assault and battery, rape, molestation, etc.)
- Victimless (e.g., driving without a license, Vehicle Code Section 12500(a)), or
- Resulting from impaired judgment (e.g., driving under the influence of alcohol or drugs.

Crimes that result in harm, or risk of harm to another individual are to be regarded as more serious than crimes that primarily involve property. In addition, special attention should be paid to crimes that involve harm to a vulnerable subject, such as a child.

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

The regulations state that it should be presumed that a subject convicted of a violent felony is not of such good character as to justify the issuance of an exemption. However, this is a rebuttable presumption because an exemption may be granted if the subject presents substantial and convincing evidence of rehabilitation.

Any exemption request for a felony conviction that appears to indicate that the convicted subject engaged in violent conduct, based upon the nature of the crime or the underlying police report, should be carefully scrutinized. When there is substantial and convincing evidence of rehabilitation and there has been significant time since the conviction or end of supervised probation the exemption may be considered. Consult with a manager and the Criminal Background Check Bureau consulting attorney.

REMEMBER Only the Branch Chief (or designee) or county equivalent can approve an exemption for a violent felony conviction. Exemptions involving nonviolent felonies less than 10 years old must be approved by a manager. Exemptions involving nonviolent felonies over 10 years old may be approved by the analyst unless the person was incarcerated for more than six months or incarcerated in prison more than once (see Branch Chief/equivalent approval requirements later in this section).

Certain misdemeanors may also contain elements of violence, that may be identified either from the nature of the criminal offense itself, or through a review of the crime report. These convictions should also be carefully scrutinized.

Actual rehabilitation time periods for any violent crime conviction may vary depending on an evaluation of factors identified below:

- The nature and severity of violence:

  Cases in which the 'violent' crime conviction resulted in bodily injury to another person should be closely scrutinized, and there should be sufficient time to establish that there is not a likelihood that the violent action may occur again.

  If the 'violent' crime conviction did not result in injury, or included a threat rather than an act of violence, the conviction should be evaluated based upon the severity of the action or threat, the likelihood of potential harm (including whether a weapon was used), and whether there was provocation that led to the act. If the act or threat is determined to be minor, shorter time periods since conviction may be appropriate.

- The characteristics of the victim (whether it was a vulnerable individual):

  A violent crime conviction is to be considered to be particularly serious if the victim was either a vulnerable individual (child, disabled, elderly), or would be considered to be less able to defend themselves (small stature, gender). Depending on the severity of the level of violence, a violent act involving a vulnerable victim should be subject to longer periods of time to establish rehabilitation.

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

- Whether a pattern of criminal behavior exists:

  With repeated acts of violence, more lengthy time periods may be warranted before the subject could be considered rehabilitated.

- The availability of admissible evidence:

  In many cases, police reports will not be available to establish the actual circumstances that led to the conviction. If a crime report is not available, the subject is expected to submit documentation from the local law enforcement agency or court jurisdiction that the report is unavailable. If the law enforcement agency will not release a crime report to the subject, the analyst should order the report. If the report is determined to be unavailable, the analyst should assume that the available information regarding the circumstances of the crime (applicant statement, references) is sufficient to make a decision on the case, and should not deny the exemption based solely on the lack of a crime report.

- Any specific efforts the subject has made to ensure future violent incidents will not occur again.

In difficult cases, or if uncertain as to the appropriate decision, consult with a manager prior to making a decision. County licensing agencies may also contact their Program Office County Liaison.

Certain crimes, which appear benign on their face, may have actually involved threats or presented a risk of violence to others. Assess the risk by obtaining the police reports, if available, and reviewing the underlying arrest information. Examples are crimes such as annoying phone calls, trespassing, vandalism, indecent exposure, misdemeanor burglary, violation of court order, resisting arrest, fight/offensive words, disturbing the peace, and burglary 2nd degree. NOTE: Although some of these crimes appear on the list of crimes that may qualify for a simplified exemption (Evaluator Manual Section 7-1720), crimes discussed here do not meet the criteria for a simplified exemption, i.e. they may have been plead down, the conviction is less than 5 years old, the subject has more than one conviction, etc.

- Carefully consider the conduct in violent arrests that are pled down to convictions for lesser offenses. If it can be determined by review of the rap sheet that the crime was originally charged as a more serious offense (possibly involving threats or violence to others), a crime report and/or available court records should be requested in order to determine the circumstances and whether the actual facts of the crime involve some component of violence. Crime reports should be ordered in cases in which the subject's statement is incomplete, questionable, or inconsistent with other evidence, or where the law enforcement agency refuses to release the reports to the perpetrator.

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

- When a crime report or court document is obtained, the decision will often depend on whether there is admissible evidence in the report that indicates that the crime involved violence. In these cases, it may be appropriate to discuss the evidence in the crime report with the Caregiver Background Check Bureau consulting attorney. County licensing agency may contact their Program Office county liaison or consulting attorney.

- If it is determined that there is evidence of violence, the standard exemption process must always be used (Evaluator Manual Section 7-1730).

- If no indication of violence is identified, and the conviction on the rap sheet is eligible for a simplified exemption, utilize the simplified exemption process (Evaluator Manual Section 7-1720).

- If a crime report cannot readily be obtained, consult with a manager to determine if additional attempts by an investigator to secure the report are warranted. County licensing agencies are responsible for obtaining crime reports. If the report cannot be obtained, the available information regarding the circumstances of the crime (applicant statement) is sufficient. Review all information available and, if necessary, consult with an exemption manager prior to making the decision. County licensing agencies may contact their Program Office county liaison.

Branch Chief (or designee) or county equivalent approval is required to approve an exemption for:

(1) A conviction for any crime which resulted in incarceration for 6 months or more.

(2) Any subject who has been incarcerated in prison more than once.

(3) A conviction for any violent misdemeanor.

(4) A conviction for any violent felony.

(5) A subsequent conviction for a subject who already has an exemption, if the conviction(s) for which the exemption was granted or the subsequent conviction is for a serious or violent crime, or if the convictions indicate a pattern of similar criminal behavior.

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

In reviewing these cases, the Branch Chief (or designee) or county equivalent will consider:

- Whether sufficient time has passed since completion of supervised probation or parole, or since the date of conviction if unsupervised probation,
- Whether subsequent convictions have occurred, and
- Whether there is substantial evidence of rehabilitation.

Carefully review the rap sheet and all police/arrest reports available. Licensing regulations and CBCB exemption request letters require that subjects who are seeking exemptions provide a copy of the specific police report(s) for all convictions. If the report has been purged, they must submit a statement from the law enforcement jurisdiction stating that the report is not available. For nonviolent crimes, the analyst may use the report to assess the accuracy of the information in the applicant's statement. However, an exemption should not be denied solely because the report is not available.

- Was the subject 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 7-1736 Exemption Decision Chart).
- Is there a pattern of repeat violations? If a subject meets the timeframes outlined in the criteria and is eligible for an exemption, review the pattern of offenses and the time lapsed between convictions. Subjects with convictions for a series of similar crimes must show a significant successful effort to change their behavior.
- Do the subject's convictions demonstrate a pattern which may be detrimental to the clients in the facility?

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

- Does the subject 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 victimless, was there potential danger?
- What age was the subject when the crimes were committed?
- Was there impaired judgment (alcohol, drugs, etc.)?
- Was there a violation of trust? If there was a victim, was the victim a vulnerable individual - the type of individual cared for in a community care facility such as a child, an elderly person or a developmentally disabled person?
- Determine the status of outstanding warrants on a rap sheet. If the rap sheet contains an arrest without a disposition, follow procedures outlined in Evaluator Manual Section 7-1535 for initial rap sheets and Evaluator Manual Section 7-1810 for subsequent rap sheets. Do not issue an exemption to a subject with an outstanding warrant. TrustLine cases may be closed using the TL-10 or TL-10.1 letter.

2. REHABILITATION

Is there substantial and convincing evidence to demonstrate rehabilitation? What has the subject done since their last conviction to demonstrate rehabilitation and "good character?"

- Has the subject been employed?
- Has the subject participated in or completed therapy, i.e., substance abuse counseling, domestic violence counseling, anger management, Alcoholics Anonymous, Narcotics Anonymous, etc.? Was counseling or therapy court ordered or voluntary?
- Has the subject pursued education or performed community service activities.
- Has there been any Administrative Action taken against the subject? CCLD check the LIS - Personnel History Report. County licensing check the County Licensing Administrative Action Personnel Flagging Attachment website. You may obtain the complete web address and access codes from your county liaison.
- Does the subject possess a Governor's Pardon? If yes, the conviction specified in the pardon does not require an exemption. A copy of the pardon should be reviewed to ensure that it covers all convictions for the subject. If the pardon does not identify all convictions, an exemption for the remaining convictions may still be required.

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

- Does the subject possess a Certificate of Rehabilitation? Please see Evaluator Manual Section 7-1515.

- Has the subject been honest in his/her interviews and conversations with the Department?

- Did the subject's written statement or Criminal Record Statement (LIC 508 or TLR-508) accurately reveal their criminal history?

  Has the subject honestly revealed the circumstances surrounding the commission of the crime?

  Does the subject's explanation support or contradict the arresting officer's report?

  Has the subject accepted responsibility and demonstrated remorse for their convictions?

  Evidence may include, but is not limited to comments on the Criminal Record Statement (LIC 508 or TLR- 508, Criminal Record Statement). Failure to provide a truthful statement on the LIC 508 or TLR-508 may be grounds for exemption denial.

  Before denying a case solely on this basis, attempt to determine if the subject reasonably forgot or misunderstood the circumstances or events. For example, if the subject reveals the most serious crimes, but neglects to reveal one or more convictions for lesser offenses, or did not reveal a conviction because they believed it was expunged under 1203.4 PC, the exemption analyst should not assume that the subject is being dishonest. This is particularly true if the exemption decision would not have changed with consideration of the undisclosed convictions.

  Obvious attempts to hide a criminal history, however, particularly when it involves denying the existence of <u>recent</u> conviction history, can and should form a basis for an exemption denial.

- Did the subject successfully complete probation or parole?

  Is the parole or probation officer willing to make a recommendation?

  Is the probation supervised or unsupervised? In cases where the subject was placed on unsupervised probation, the analyst should apply other criteria in determining rehabilitation, but should <u>not</u> deny the exemption solely based on the probation and parole requirements as listed in the regulations. See Evaluator Manual Section 7-1735 for more information on supervised/unsupervised probation.

- Was the subject required to make restitution? What is the restitution status?

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

- Carefully review the character references. References:

  ✓ must be on an LIC 301E
  ✓ must be complete and legible
  ✓ cannot be from a relative, employee, client of the facility, or the licensee
  ✓ cannot be cloned

  Character references that fail to meet the above requirements are not acceptable and may delay the exemption decision. References may be contacted if necessary.

  Failure to submit character reference letters may result in an exemption denial. The analyst has discretion, however, to approve an exemption when the applicant submits fewer than three character reference letters provided sufficient evidence of rehabilitation exists.

- If any documents or information is missing, either contact the subject or send an Additional Information Needed letter.

Document all discussions and issues for the case file and legibly sign the documentation with your full name.

3. CLIENTS/FACILITY TYPES

Carefully review the convictions while considering the following:

- The role and responsibilities of the subject and the subject's position or relationship to the facility, i.e., licensee, spouse, employee.

- The subject's sphere of influence at the facility and potential opportunity to harm clients. Do the convictions warrant special consideration given the relationship of the subject to the clients?

- The type of crime in relation to the client population.

  For example, a subject with a recent DUI conviction or a history of drug convictions would not be suitable for transporting clients or dispensing medications. A subject with theft related convictions would not be suitable for providing care to elderly adults with vulnerable private property.

- The type of crime in relation to the facility type.

  For example, a subject with convictions for fiduciary abuse of their elderly relatives may be a real concern if he/she is applying for a license to care for the elderly. The same convictions for an employee of a child care facility may not raise the same concerns. A subject with convictions for contributing to the delinquency of minors would be a concern if he/she planned on working in or operating a group home, depending on the facts underlying the conviction. The same convictions for a person operating or working in an elderly facility may not be an issue.

7-1731.1 CONDITIONAL EXEMPTION 7-1731.1

When a subject meets all other exemption approval criteria, but there are concerns about their ability to provide care to a specific client group or perform certain job duties, the analyst may recommend approval of the exemption with conditions.

Example 1

It is common that alcohol or drug treatment facilities employ subjects with substance abuse convictions. Some employees were previous residents who have progressed into counselor positions. In these cases a Conditional Exemption may be considered for the subject to work only in that specific facility or facility type.

Example 2

If a subject has a single DUI conviction, a conditional exemption that limits the subject to jobs that do not involve driving might be appropriate depending on the amount of time passed since the conviction. The exemption should include these conditions whether or not the subject's job description states that he/she will be driving.

If a subject does not meet all exemption approval criteria, a conditional exemption may be granted if the subject provides sufficient evidence of rehabilitation.

All conditional exemptions must be approved by a manager or designee or county licensing equivalent.

CBCB conditional exemption letters are the cbcb4.01, cbcb4.11, and cbcb21.1. The CBC system must also be updated to reflect the conditional exemption. List the specific conditions in the comments section. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

Prior to granting a conditional exemption, the licensing agency may contact the licensee to discuss the parameters of the conditional approval and obtain their agreement with the terms. The licensee/subject may appeal the restriction or terms of conditional approval. (See Evaluator Manual Section 7-1760, Appeal of the Exemption Denial).

TrustLine Cases

Because TrustLine registrants are not monitored, conditional exemptions are not granted for TrustLine cases.

7-1734 JUDGMENT OF CONVICTION 7-1734

A Judgment of Conviction is a record maintained by the court that documents the finding that a person is guilty or not guilty of a crime and contains information on any sentence or fine. It may also indicate the reasons why the person was not convicted.

A *certified* copy of the Judgment of Conviction must be obtained when the licensing agency receives an appeal of a denied exemption unless verification of convictions listed on the RAP sheet has been obtained through a written statement by the subject.

The certified Judgment of Conviction 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 Judgment of Conviction.

A court may refuse to respond to the licensing 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. If unable to obtain a Judgment of Conviction and the subject does not admit to the conviction in writing, the licensing agency may obtain certified copies of disposition information by contacting the Department of Justice, Bureau of Criminal Identification and Information, Keeper of Records. The Department of Justice will provide this information if the stated purpose is for an "administrative law hearing only." You may contact the Criminal Background Check Bureau consulting attorney if you are unable to obtain a Judgment of Conviction for someone previously in prison.

If the Department obtains information that a conviction actually occurred during the course of an arrest investigation, the Judgment of Conviction and other supporting documentation should be attached to the Arrest-only Investigation Transmittal and returned to the analyst handling the case. Counties must process this newly discovered conviction pursuant to Evaluator Manual Section 7-1821 Convictions Subsequent to Clearance or Exemption.

7-1735 DECISION CRITERIA 7-1735

Licensing regulations outline minimum timeframes, following incarceration, supervised probation, or parole that must lapse before an exemption should be approved unless the subject presents compelling evidence of rehabilitation. If a subject is eligible for an exemption after applying these regulations, the analyst should also review the pattern of offenses and the timeframes between convictions. Subjects who committed a series of similar crimes must demonstrate a significant effort to change their behavior.

The licensing agency must verify the type of probation the subject received to determine the number of years that must lapse. (See Determining Probation Type later in this section.) If the subject was placed on supervised probation, the number of years that must lapse starts from the end of probation. If a subject was placed on unsupervised probation, the number of years that must lapse are counted from the date of the conviction.

The criteria below can also be found in chart format in Evaluator Manual Section 7-1736.

If the subject's criminal history meets all of the applicable criteria specified below and the subject submits substantial and convincing evidence of good character, an exemption may be considered without Branch Chief (or designee) or county equivalent approval.

NOTE: A violent crime is a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The subject has been convicted of one nonviolent misdemeanor, and one year has lapsed since incarceration or completion of supervised probation. If unsupervised probation, one year since the date of the conviction.

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

(2) The subject 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, four years since the date of the conviction. *

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

(3) The subject has been convicted of one 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 exceptions must be approved by the Branch Chief (or designee) or county equivalent.

7-1735 DECISION CRITERIA (Continued) **7-1735**

(4) The subject 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 designee) or county equivalent.

(5) The subject 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 designee) or county equivalent.

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

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

* If it can be determined from the rap sheet or arrest report that a subject received two or more convictions for lesser offenses from a single criminal event, an exception to the time period may be considered. The most common example is when a person receives two convictions (VC Section 23152A and 23152B) for a single DUI event.

** If the subject 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 all criteria as required by Evaluator Manual Section 7-1731 Evaluation of Standard Exemption.

*** If the subject has a combination of convictions that include both a nonviolent felony and nonviolent misdemeanor(s), consider all criteria as required by Evaluator Manual Section 7-1731 Evaluation of Standard Exemption. 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 manager is required.

7-1735 DECISION CRITERIA (Continued) **7-1735**

Determining Probation Type

- Generally, subjects convicted of nonviolent lesser offenses will be placed on unsupervised or informal probation, unless the rap sheet indicates otherwise. A subject on unsupervised or informal probation is not under the direct supervision of a probation officer and is not subject to periodic checks. Usually the subject must only refrain from further criminal activity and report address changes to his/her probation officer. Throughout this manual all references to "unsupervised probation" means both unsupervised and informal probation.

- 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. A subject on supervised or formal probation is under the direct supervision of a probation officer and is subject to periodic checks. Throughout this manual all references to "supervised probation" means both supervised and formal probation.

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

  a. Acceptable court documents such as Minute Orders, 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 subject was placed on unsupervised or informal probation by the judge directly, or a specific designation that the probation was unsupervised or informal (inf), 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.

For cases in which the probation status has changed from supervised to unsupervised; the time frames in the Decision Criteria should be applied from the date of the change.

7-1736 EXEMPTION DECISION CHART 7-1736

A violent crime is that which upon evaluation of the code section violated or the reports of the underlying offense presents violence, or the risk of harm.

Nonviolent Misdemeanor	Violent Misdemeanor	Nonviolent Felony	Violent Felony
No more than 1 conviction 1 year has passed since completing incarceration or supervised probation If unsupervised probation, then 1 year has passed since the date of conviction Any exception to the time period must be approved by the Branch Chief (or designee) or county equivalent	**1 or more convictions** 15 consecutive years have passed since completing the most recent period of incarceration, parole, or supervised probation* If unsupervised probation, then 15 consecutive years have passed since the date of conviction All exemptions for violent misdemeanors must be approved by the Branch Chief (or designee) or county equivalent	**No more than 1 conviction** 4 consecutive years have passed since completing the most recent period of incarceration, parole, or supervised probation** If unsupervised probation, then 4 consecutive years have passed since the date of conviction Any exception to the time period must be approved by the Branch Chief (or designee) or county equivalent	**1 or more convictions** All exemptions for violent felonies must be approved by the Branch Chief (or designee) or county equivalent
2 or more convictions 4 consecutive years have passed since completing the most recent period of incarceration, parole, or supervised probation If unsupervised probation, then 4 years have passed since the date of conviction Any exception to the time period must be approved by the Branch Chief (or designee) or county equivalent		**2 or more convictions** 10 consecutive years have passed since completing the most recent period of incarceration, parole, or probation If unsupervised probation is the most recent event, then 10 consecutive years have passed since the date of conviction Any exception to the time period must be approved by the Branch Chief (or designee) or county equivalent	

* If the subject 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 all criteria as required by Evaluator Manual Section 7-1731 Evaluation of Standard Exemption.

** If the subject has a combination of convictions that include both a nonviolent felony and nonviolent misdemeanor(s), consider all criteria as required by Evaluator Manual Section 7-1731 Evaluation of Standard Exemption. 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 two or more nonviolent felonies unless it is determined that the four 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 manager is required.

7-1740 NOTIFICATION OF THE EXEMPTION DECISION 7-1740

The Caregiver Background Check Bureau and county licensing agency will use the following procedures when notifying a subject of the exemption decision:

A. Approval

Standard – Notification of a standard or conditional exemption approval is sent to the licensee only. Use the appropriate Caregiver Background Check Bureau approval letter (cbcb4.0, 4.01, 4.1 or 4.11). In TrustLine cases, the TL-15 letter is used. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

If the subject was removed/excluded from a Family Child Care Home see Evaluator Manual Section 7-1825, pending the exemption:

- complete a Family Child Care Home - Notification of Parent's Rights Addendum to Reinstate (LIC 995C)
- send a copy of the form to the licensee with the exemption approval letter.
- file a copy of the LIC 995C in the subject's exemption case file.

Individual – Notification of an *individual* exemption approval is sent to the subject only. Use the appropriate Caregiver Background Check Bureau individual approval letter (cbcb21). County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

Simplified – Notification of a simplified exemption approval is sent to the licensee only. Use the appropriate Caregiver Background Check Bureau approval letter (cbcb4.0 or 4.1). In TrustLine cases, the TL-35 letter is used. See Evaluator Manual Section 7-1720 Simplified Exemption. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

B. Denial

An individual, who has been denied a criminal record exemption, has a right to request a copy of his/her state and/or federal Criminal Offender Record Information (CORI) search response (rap sheet). To request a copy of his/her rap sheet, the individual must send a written request to the Department within fifteen (15) days of the date of the denial letter. The written request must be dated and signed and must specify where the rap sheet is to be sent. (See Evaluator Manual Section 7-2010)

Standard – Notification of a standard exemption denial is sent to the licensee and the individual. The Regional Office is notified via email. Use the appropriate Caregiver Background Check Bureau denial letter (cbcb5.1 or 5.2). The Caregiver Background Check Bureau letters contain instructions for appealing the exemption denial. (See Evaluator Manual Section 7-1760 Appeal of the Exemption Denial). In TrustLine cases, the TL-16 or TL 36 letter is used. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

7-1740 NOTIFICATION OF THE EXEMPTION DECISION (Continued) **7-1740**

Individual – Notification of an *individual* exemption denial is sent to the subject only. Use the Caregiver Background Check Bureau individual denial letter (cbcb22).

Applicant – If the Caregiver Background Check Bureau or the county licensing agency denies the exemption of an applicant, spouse or a dependent family member who will reside in the facility, the license application must be denied. The Caregiver Background Check Bureau will inform the Regional Office that is processing the license application by letter (cbcb5.0 Unified Appeal).

The Regional Office and county licensing agency must inform the applicant of the denial, using the cbcb5.0 Template Letter 1 found in the common library as a guide to draft a letter to the applicant. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within sixty (60) days. The response form tells the Caregiver Background Check Bureau if the applicant is appealing the denial. See Evaluator Manual Section 7-1760 Appeal of the Exemption Denial.

Licensee/Family Member - If the Caregiver Background Check Bureau or county licensing agency denies, cancels or rescinds the exemption of a licensee, spouse or a dependent family member, whose place of residence is the licensed facility, the license must be revoked. The Caregiver Background Check Bureau will inform the Regional Office by telephone and letter (cbcb5.0 Unified Appeal).

The Regional Office or county licensing agency must inform the licensee of the revocation, using the cbcb5.0 Template Letter 2 found in the common library as a guide to draft a letter to the licensee. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

In addition to the notification, the Caregiver Background Check Bureau will also send a response form that the Regional Office must complete and return to the Caregiver Background Check Bureau within sixty (60) days.

NOTE– All denial letters must include the reason the exemption was denied. Letters in the CBC Application will allow this case specific entry. The reason cannot include information about the conviction. County licensing, see sample letters in Appendix H.

7-1760 APPEAL OF THE EXEMPTION DENIAL 7-1760

Applicant/Spouse/Dependent Family Member

The license applicant may appeal **both** the license application denial **and** the exemption denial in a single, unified appeal letter to the Program Office. The appeal must include the affected subject's mailing address and telephone number. The Program Office must acknowledge the receipt of the appeal within five days.

If the license application denial was based on issues other than, or in addition to, a denied exemption, the Regional Office will prepare the statement of facts. If the license application denial is solely based on a denied, cancelled, or rescinded exemption, the Caregiver Background Check Bureau will prepare the statement of facts. County licensing agencies are responsible for the statement of facts in both situations. The Regional Office must send the Caregiver Background Check Bureau the appeal letter, a copy of the LIC 508 (if not previously sent) and the LIC 200. These documents must be sent with the completed Regional Office Response form within sixty (60) days of the date of the field notification letter (cbcb5.0).

The Statement of Facts - Case Summary *and* Special Issues/Pertinent Information Sections must state that the license application denial is based upon the denied criminal record exemption. The Statement of Facts must always request a licensing action and an exclusion of the subject that was denied an exemption. The Statement of Facts will be categorized by legal as an "A" case if it is a denial of the license application. The action against the dependent family member will be categorized as a "B" case in conjunction with an exemption denial. See Evaluator Manual Section 1-1010, Denial of Application and Evaluator Manual Section 1-1100, The Statement of Facts.

Licensee/Spouse/Dependent Family Member

Licensees may appeal **both** the license revocation **and** the exemption denial by returning the Notice of Defense to the legal division after being served with legal documents.

If the license revocation was based on issues other than, or in addition to, a denied exemption, the Regional Office will prepare the statement of facts. If the license revocation is solely based on a denied, cancelled, or rescinded exemption, the Caregiver Background Check Bureau will prepare the statement of facts. County licensing agencies are responsible for the statement of facts in both situations.

7-1760 APPEAL OF THE EXEMPTION DENIAL (Continued) 7-1760

The Statement of Facts - Case Summary *and* Special Issues/Pertinent Information Sections must state that the license revocation is based upon the denied criminal record exemption. The Statement of Facts must always request a licensing action and an exclusion of the subject who was denied an exemption. The Statement of Facts will be categorized by legal as an "A" case if it is a revocation. The action against the dependent family member will be categorized as "B" case in conjunction with revocation action. See Evaluator Manual Section 1-1010, License Revocation and Evaluator Manual Section 1-1100, The Statement of Facts.

Employee/Resident

A licensee or an applicant may appeal an exemption denial on behalf of the affected subject or a subject may appeal a denial of an individual exemption. The appeal must be in writing and postmarked no later than 15 days from the date of the denial letter.

The appeal must include the subject's mailing address and telephone number. The licensing agency must acknowledge the receipt of the appeal within five days.

The Caregiver Background Check Bureau will prepare the statement of facts. The Statement of Facts must always request an exclusion of the subject who was denied an exemption. See Evaluator Manual Section 1-1010, Denial of Application and Evaluator Manual Section 1-1100, The Statement of Facts.

7-1770 EXEMPTION TRANSFER 7-1770

Between State Licensed Facilities

To request an exemption transfer between state licensed facilities or the license applicant or licensee must submit a completed Criminal Record Exemption Transfer Form (LIC 9188) to the Regional Office. The LIC 9188 must be signed by the licensee, or license applicant. If the facility is licensed, the LIC 9188 may be signed by the facility administrator or manager.

Between State Licensed Facilities & TrustLine Registry

To request an exemption transfer from a state licensed facility to the TrustLine Registry, the TrustLine applicant must submit a completed Criminal Record Exemption Transfer Form (TLR 3) to Caregiver Background Check Bureau. The TLR 3 must be signed by the licensee, applicant or TrustLine registrant.

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

To request an exemption transfer from a state licensed facility to the TrustLine Registry, the TrustLine applicant must check "Yes" in the transfer process section of the TrustLine Registry application form (TLR 1, 2, 4).

Instructions for Regional Office

- Upon receipt of the LIC 9188, forward the form to the Caregiver Background Check Bureau.

- If a Child Abuse Central Index check is required and a previous inquiry was submitted, review the submission date. If the inquiry was submitted prior to January 1, 1999, inform licensee that a new inquiry and the current processing fee must be submitted.

- Inform licensee requesting the transfer that the subject may not work or reside in the facility until they receive a written notice that the exemption transfer has been approved.

Instructions for Caregiver Background Check Bureau

Upon receipt of the completed LIC 9188 from the Regional Office or a TLR 3 from a TrustLine applicant, review the exemption case file and/or rap sheet(s) in the Caregiver Background Check database (if available) to determine:

- Whether the subject's conviction(s), for which the exemption was granted, are now non-exemptible.

  If the subject's exemption was granted for a conviction that is now non-exemptible, the exemption must be rescinded and the transfer denied. For the rescission send Exemption Rescinded (CBCB 23 and CBCB 23.2) to the licensee and the subject. For the denial, send Exemption Transfer Denial Notice (CBCB 5.3 and 6.0) to the licensee.

  If the transfer request is for an employee, the subject must be excluded from all facilities. If the transfer request is for a licensee, send the Regional Office an Exemption Denial Field Notification (CBCB 6.0). Follow instructions in Evaluator Manual Section 7-1740.

- If there are any convictions on the rap sheet that were not addressed or exempted.

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

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

- If there are any conditions on the exemption

  If the exemption is conditional, determine if the conditions placed on the exemption preclude transfer of the exemption. Evaluate available information to determine if the condition(s) are still warranted. Revision or removal of conditions may be recommended. If no file is available, and the conditional exemption was granted by the Legal Division, contact the Legal Division or access the Licensing Administrative Actions Records System to obtain copies of any stipulations and decision and orders. If no file is available, process as a new exemption.

  If the exemption does not include conditions, review the decision to determine if adding a condition may be appropriate. Conditional exemptions cannot be granted for TrustLine registrants (see Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1731.1).

- If there have been any administrative actions taken against the subject since the exemption was granted.

  If there has been an Administrative Action, contact the Legal Division or access the Licensing Administrative Actions Records System to obtain copies of any stipulations and decision and orders.

- If the subject has an arrest that is currently being investigated:

  Continue processing the transfer.

- If the subject has an arrest that has not been investigated:

  Continue processing the transfer and initiate an investigation into that arrest if the arrest is for a crime listed in Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2100, 7-2115 or 7-2125.

- If the subject is awaiting trial for a sex offense against a minor.

  If the subject is awaiting trial for a sex offense against a minor, discuss with consulting attorney.

- If the exemption was granted for a subject who has a certificate of rehabilitation

  If the exemption was granted for a subject who has a certificate of rehabilitation, as specified in Evaluator Manual, Reference Material, Background Check Procedures, Section 7-1515, the exemption can only be transferred to other facility types governed by Health & Safety Code Section 1522. This means the exemption cannot be transferred to an Residential Care Facility for the Elderly, Residential Care Facility for the –Chronically Ill, and any child care facility or to the TrustLine Registry. For these facility types the crime for which the exemption was granted remains non-exemptible.

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

- For transfers to a facility subject to a Child Abuse Central Index check and the TrustLine Registry, if the Child Abuse Central Index check is current

  If the subject has a completed Child Abuse Central Index check and the subject's inquiry was made prior to January 1, 1999, a new inquiry and the current processing fee must be submitted.

  If TrustLine Subsidized Child Care, stage 1 or 2, Caregiver Background Check Bureau will process the Child Abuse Central Index check.

- For transfers to a facility subject to a Child Abuse Central Index check and the TrustLine Registry, if a Child Abuse Central Index check is needed

  If the subject is transferring from a facility type that did not require a Child Abuse Central Index check, a request for a check of the Child Abuse Central Index and the current processing fee must now be submitted.

  If TrustLine Subsidized Child Care stage 1 or 2, Caregiver Background Check Bureau will process the Child Abuse Central Index check.

- For Foster and Certified Family Homes, if the Federal Bureau of Investigation check is complete.

  A completed FBI criminal history check is required prior to transfer for Foster Family Homes and Certified Family Homes.

If the subject's rap sheet is not in the Caregiver Background Check database and exemption case file is unavailable, request a copy of the subject's Criminal Record Statement (LIC 508) from the licensee requesting the transfer and process the transfer based on the subject's disclosures.

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

Between County Licensing Agencies Or Between State And County Licensing Agencies – Family Child Care Homes (FCCH) and Foster Family Homes (FFH) Only

If a Family Child Care Home, Foster Family Home or Certified Family Home applicant, employee or resident indicates that he/she has a licensing agency processed background check, the results of that check and subsequent criminal record information (rap back service) may be transferred to another contracted county licensing agency or to Community Care Licensing provided:

1. The transfer is within the same licensing category, (e.g. Family Child Care Home to Family Child Care Home, or Foster Family Home to Foster Family Home). Certified Family Homes are defined by the Department of Justice as the same facility type as licensed Foster Family Homes, therefore transfers between FFA certified homes and county licensed foster family homes are allowed;

2. The subject has an "active" status at the Department of Justice, that is, the original licensing agency is still authorized to receive subsequent history information from the Department of Justice and has not made the applicant inactive by returning a 'no longer interested' form to the Department of Justice;

   AND

3. Department of Justice confirms that the authority to receive rap back service has been transferred to the licensing agency requesting the transfer (see below for specifics).

The following transfers are NOT allowed;

- Between a Foster Family Home and homes utilized by another county for placement of a relative child.

- Between persons on the TrustLine Registry and a county licensed Family Child Care Home or Foster Family Home.

The licensing agency requesting the transfer must contact the licensing office that processed the background check to determine if the background check is eligible for a transfer and to inquire as to whether the subject has a clearance or a criminal record exemption (see Evaluator Manual Section 7-1100 for clearance transfers).
For exemptions processed by state licensing, contact Caregiver Background Check Bureau Customer Service at (916) 653-1929. If the exemption was processed by a county licensing agency and the correct office cannot be located, contact your County Liaison.

If the background check is eligible for a transfer and the subject has a criminal record exemption, the licensing agency requesting the transfer must:

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

- Give the subject a copy of the Substitute Agency Notification Request (BCII 9002), the phone number of the licensing office that processed the exemption and instructions to:

  - Complete Step I of the Substitute Agency Notification Request form (BCII 9002), (applicant information).
  - Contact the licensing agency that processed the exemption to obtain information to complete Step II.
  - Return the form with Step I and Step II completed.

  Copies of the form are available on the DSS Community Care Licensing Division website at http://www.dss.cahwnet.gov/cdssweb/PG164.htm#b .

- Request the exemption case file from the licensing 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 sent by certified mail. All original documentation regarding the subject's exemption will now be maintained by the licensing agency requesting the transfer.

- Review the exemption case file to determine:

  - Whether the subject's conviction(s), for which the exemption was granted, are now non-exemptible.

    If the subject's exemption was granted for a conviction that is now non-exemptible, the exemption must be rescinded and the transfer denied. For the rescission send Exemption Rescinded (CBCB 23 and CBCB 23.2) to the licensee and the subject. For the denial, send Exemption Transfer Denial Notice (CBCB 5.3) to the licensee.

  - If there are any convictions on the rap sheet that were not addressed or exempted

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

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

- If there are any conditions on the exemption

  If the exemption is conditional, determine if the conditions placed on the exemption preclude transfer of the exemption. Evaluate available information to determine if the condition(s) are still warranted. Revision or removal of conditions may be recommended. If no file is available, and the conditional exemption was granted by the Legal Division, contact the Legal Division or access the Licensing Administrative Actions Records System to obtain copies of any stipulations and decision and orders. If no file is available, process as a new exemption.

  If the exemption does not include conditions, review the decision to determine if adding a condition may be appropriate.

- If there have been any administrative actions taken against the subject since the exemption was granted.

  If there has been an Administrative Action, contact the Legal Division or access the Licensing Administrative Actions Records System to obtain copies of any stipulations and decision and orders.

- If the subject has an arrest that is currently being investigated

  If there is an investigation in progress, continue processing the transfer.

- If the subject has an arrest that has not been investigated

  If an investigation is warranted (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2100, 7-2115 or 7-2125), continue processing the transfer and initiate an investigation into that arrest.

- If the subject is awaiting trial for a sex offense against a minor

  If the subject is awaiting trial for a sex offense against a minor, discuss with the consulting attorney.

If the subject's rap sheet is not in the Caregiver Background Check database and exemption case file is unavailable, request a copy of the subject's Criminal Record Statement (LIC 508) from the licensee requesting the transfer and process the transfer based on the subject's disclosures.

7-1770 EXEMPTION TRANSFER (Continued) **7-1770**

If it is determined that the exemption can be transferred the licensing 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 rap back service has been transferred to the licensing agency requesting the transfer.
- When confirmation is received from the Department of Justice, send a copy of the form to the licensing agency that processed the exemption.
    - Licensing agencies receiving notice that the Department of Justice has authorized the transfer of rap back service to another licensing agency must inactivate the subject 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: http://oag.ca.gov/sites/all/files/pdfs/fingerprints/forms/nli.pdf#xml=http://search.doj.ca.gov:8004/AGSearch/isysquery/04c95bd5-1626-4f6f-a5a2-d208df6d4371/1/hilite/

The licensing 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 subject must submit a new Child Abuse Central Index request as part of the transfer process. The licensing agency requesting the transfer must ensure that the applicant submits Child Abuse Central Index Check for County Licensed Facilities (LIC 198), (current processing fee) and the Substitute Agency Notification Request (BCII 9002), with step I and II completed, to Department Of Justice.

Licensure cannot be approved until Department Of Justice has confirmed that the authority to received rap back service has been transferred.

Employment or residency cannot begin until Department Of Justice has confirmed that the authority to receive rap back service has been transferred.

A completed FBI criminal history check is required prior to transfer for Foster Family Homes and Certified Family Homes.

NOTE: The above transfer procedures are for exemptions only. See Evaluator Manual Section 7-1100 for clearance transfer procedures.

7-1800 STATE LICENSING: ARRESTS - SUBSEQUENT TO A CLEARANCE OR AN EXEMPTION 7-1800

Licensing agencies requesting a criminal record background check will receive ~~a~~ subsequent reports (rap back) of all arrests. The report will specify the violation, but usually will not indicate the disposition. Upon receipt of a rap back with only arrest information (no convictions) the Caregiver Background Check Bureau will review the rap back and determine the crime type of each arrest.

The Department of Justice will NOT send out a follow-up rap back report after a disposition has been made.

Arrests for crimes on the Non Exemptible (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100) and the Additional Arrests Requiring Investigation (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2125) crimes lists must be referred to the Investigations Bureau for investigation.

For persons associated to Foster Family and Certified Family Homes, in addition to arrests for crimes listed in Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2100 and 7-2125, arrests for crimes listed in the Federal Non-Exemptible (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2110) and Federal 5-Year Ban Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2115) crimes list, must also be referred to the Investigations Bureau for investigation.

During the arrest investigation the licensing agency cannot remove a person from the facility. The licensing agency may remove a person from the facility only after obtaining evidence that the person is a risk to clients in care.

If the subject is awaiting trial for a sex offense against a minor, discuss with the consulting attorney.

A licensee, spouse or a dependent family member cannot be removed for their home. If the subject is the licensee or a dependent family member, discuss a possible Temporary Suspension Order with the consulting attorney.

Processing Procedures for Referable Subsequent Arrest Cases – Step 1

If the subject is an employee of the facility, contact the licensee of each facility with which the subject is associated to determine if the subject is still working in the facility and if the licensee still wants the subject to remain associated with the facility.

If the subject is no longer working in the facility or the licensee no longer wants the subject to remain associated to the facility, enter the end date in the demographics field in the Caregiver Background Check database making the subject "active not working". The database will reflect a status of rap received. If the subject does not associate to a new facility within three years, the database will automatically change to "No longer interested" and notify the Department of Justice. If the subject associates to a new facility, process the arrest as described below.

If the subject is the license applicant, spouse, or dependent family member or TrustLine registrant, a phone call is not necessary to determine if the subject still wants to be licensed, registered or is still residing in the facility.

7-1800 STATE LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) 7-1800

Processing Procedures for Referable Subsequent Arrest Cases – Step 2

Check available online court databases in the county where the subject was arrested for any disposition information. The disposition determines how the case will be processed.

►Arrests With The Following Dispositions Are NOT To Be Referred to Investigations:

☑ All Released/Detention only including, but not limited to 849(B) Penal Code

Any case in which a person is arrested, released and no accusatory pleading is filed charging the subject with an offense, the arrest is no longer an arrest, but a detention only.

Arrests that are released by law enforcement per 849(B) or 859.5 Penal Code (Prosecutor Reject).

Prosecutor Releases (Rejects) fall under 849.5 Penal Code. These are arrests without filing of accusatory pleading or record. The arrest is deemed a detention.

Rap Sheet Entry Example:

- Pros Rel – Det Only – Reason
  This translates to Prosecutor Release – Detention Only – For any reason such as Lack of Evidence

☑ Finding of Factual Innocence

☑ Infraction

☑ Conviction

- If the subject was convicted of a non-exemptible crime (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2100 and 7-2110 for Foster and Certified Family Homes), send the applicable Non-Exemptible Conviction notice (CBCB 6.0, 6.1 and, 6.1 C; 6.1ffa and 6.1ffa C; 6.1r; 6.2), the Revocation of TrustLine Registry (TL 32) notice.

- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

►Arrests With The Following Dispositions MAY Be Referred to Investigations:

☑ Diversion
See Evaluator Manual Section 7-1540

7-1800 STATE LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1810**

In addition, an arrest for a crime **NOT** listed in the Non Exemptible crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100), the Additional Arrests Requiring Investigation crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2125) or Federal Crimes lists for Foster Family and Certified Family Homes (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2110 and 7-2115) **may** be referred to the Investigations Bureau for investigation, if the Caregiver Background Check Bureau determines that, based on the known facts of the case, the subject's conduct or character may pose a risk to the health and safety of clients in care. Referral for these arrests requires manager and legal approval. Referrals must be submitted on a Service Request transmittal rather than an orange Arrest-only Transmittal.

► Arrests With The Following Dispositions MUST Be Referred To Investigations:

- ☑ Complainant Refused Prosecution
- ☑ Bail Exonerated
- ☑ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☑ Acquitted or Not Guilty
- ☑ Prosecutor filed a criminal complaint but later dismissed it
- ☑ Any other disposition not exempted above

Processing Procedures for Referable Subsequent Arrest Cases – Step 3

- If the subject is the licensee or license applicant, update the Caregiver Background Check database and send a Notice of Investigation (AO 6) to the subject informing him/her that an investigation is being conducted.

- If the subject is the spouse or a dependent family member of the licensee, contact the Regional Office to determine the course of action. Arrest and investigation information is confidential and cannot be shared with anyone except the subject.

- If the subject is a TrustLine registrant, send the Notice of Subsequent Criminal History Information (AO 8a).

- If the subject is a potential employee, current employee, or non client adult resident, update the Caregiver Background Check database and send a Notice of Investigation Employee/Resident (AO 8b) to the subject informing him/her that an investigation is being conducted. If the subject returns the AO 8b notice and indicates that he/she does not want the investigation to continue, close the case.

Processing Procedures for Referable Subsequent Arrest Cases – Step 4

If an investigation is warranted:

- Refer the case to the Investigations Branch via an Arrest-only Transmittal (orange form).
- Make copies of all documents sent to Investigations for file.

7-1800 STATE LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1810**

Processing Procedures After Investigation Has Been Completed

After the investigation has been completed, the Investigations Branch will return the Arrest-only Transmittal, with a copy of the investigative report, to the Caregiver Background Check Bureau (M.S. 1562) with one of the following checked:

A. ☐ Unable to Substantiate- Send directly to Caregiver Background Check Bureau
B. ☐ Applicant/voluntary closure - Send directly to Caregiver Background Check Bureau
C. ☐ Conviction occurred- Court documentation attached- Send directly to CBCB.
☐ Misdemeanor ☐ Felony
D. ☐ Substantiated- Send to CBCB if employee; send to Regional Office if applicant licensee, spouse, or dependent adult.
E. ☐ Other

Enter the checked result on the Licensing Information System and take the following corresponding action:

A. Issue a CDSS clearance and destroy the case
B. Update system to reflect "Applicant No Longer Interested", send a CBCB11 notice to Regional Office
C. Process the conviction
D. Follow the Substantiated Case Procedures below

If the completed investigation report does not provide a basis for an Administrative Action, enter the investigation findings in the comment field in the CBC database. If the subject previously had an exemption, update the CBC database to return the subject to "Exemption Granted" status.

Substantiated Case Procedures for Employees, Non Client Adult Residents and TrustLine Registrants:

1. Review case.

2. Prepare a Case Analysis Worksheet with a recommendation for an immediate exclusion, non-immediate exclusion, no action (maintain clearance), TrustLine revocation. Note: if the recommendation is for an immediate exclusion, it will require a review and signed approval by both the Branch Chief (or designee) and the consulting attorney.

3. Attach a copy of the worksheet to the front of the case file and forward to your manager for review. The manager will review all case analysis documents and may discuss with the analyst, Bureau Chief (or designee) or consulting attorney for additional information or advice on the recommendation.

7-1800 STATE LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1810**

- If the manager agrees with the recommendation, case will be returned to the analyst for processing.

  If the manager does not agree with the recommendation, case may be discussed with the analyst or Bureau Chief (or designee) or may be submitted to Consulting Attorney for assessment. The Bureau Chief will review the case and render a final recommendation on case.

  If case is reviewed in person, the Consulting Attorney will sign the analysis worksheet.

  If case is reviewed over the phone or through e-mail, the consulting attorney will send an email with the appropriate recommendation, concurrence and any details pertinent to the legal case.

4. Document all discussions and issues on a contact sheet and place in the case file. Sign full name legibly on all documentation.

5. Update Caregiver Background Check database and generate the appropriate letter.

6. If applicable complete a Statement of Facts. Prepare a case for each action required, i.e. exemption rescission, license revocation. For example, if the subject has a previous exemption, prepare an "A" case which excludes the subject, and a "B" case which rescinds the exemption. Have Statement of Facts approved and signed by the manager, Branch Chief and Consulting Attorney

7. Prepare and distribute exclusion documents as follows:

   Immediate Exclusions

   - Prepare Immediate Exclusion Order (Order) and obtain all required signatures for approval

   - Send original Order to the subject via certified mail as well as a copy by regular mail

   - Send copies of the Order to the facility and the licensee via certified mail. Fax a copy to the facility

   - Fax a copy of the Order to the Regional Office

   - Scan and email a copy to the LPA

   - Prepare a Declaration of Service form for each facility to which the Order was sent

   - Document all certified mail receipt numbers in the comments section in the Caregiver Background Check database

7-1800 STATE LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1810**

- If subject appeals with the required 15 days from the date of the Order, immediately forward appeal to the Legal Division

- If subject does not appeal, determine if "For The Record" action is needed. See Evaluator Manual Section 1-1417

Non-immediate Exclusions

- Forward case file with completed Statement of Facts to the Legal Division

The Legal Division will assign an attorney to prepare an accusation that will notify the subject of the action and the due date for the Notice of Defense.

7-1811 COUNTY LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION **7-1811**

The licensing agencies requesting a criminal record background check will receive subsequent reports (rap back) of all arrests. The report will specify the violation, but usually will not indicate the disposition. Upon receipt of a rap back with arrest-only information (no convictions) the county licensing agency will review the rap back and determine the crime type of each arrest.

The Department of Justice will NOT send out a follow-up rap back report after a disposition has been made.

Arrests for crimes on the Non Exemptible (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100) and the Additional Arrests Requiring Investigation (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2125) crimes lists must be investigated.

For persons associated to Foster Family Homes in addition to arrests for crimes listed in Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2100 and 7-2125, arrests for crimes listed in the Federal Non-Exemptible (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2110) and Federal 5-Year Ban Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2115) crimes list, must also be investigated.

During the arrest investigation the licensing agency cannot remove a person from the home. The licensing agency may remove a person from the facility only after obtaining evidence that the person is a risk to clients in care.

If the subject is awaiting trial for a sex offense against a minor, discuss with the consulting attorney.

7-1811 COUNTY LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1811**

A licensee, spouse or a dependent family member cannot be removed for their home. If the subject is the licensee or a dependent family member, discuss a possible Temporary Suspension Order with the consulting attorney.

Processing Procedures for Subsequent Arrest Cases – Step 1

If the subject is an employee of the home, contact the licensee to determine if the subject is still working in the home and if the licensee still wants the subject to remain associated with the home.

If the subject is no longer working in the home or the licensee no longer wants the subject to remain associated to the home, indicate so in the file and close the case.

If the subject is the license applicant, spouse, or dependent family member, a phone call is not necessary to determine if the subject still wants to be licensed, registered or is still residing in the home.

Processing Procedures for Subsequent Arrest Cases – Step 2

Check available online court databases in the county where the subject was arrested for any disposition information. The disposition determines how the case will be processed.

► Arrests With The Following Dispositions Are NOT To Be Investigated:

☑ All Released/Detention only including, but not limited to 849(B) Penal Code

Any case in which a person is arrested, released and no accusatory pleading is filed charging him with an offense, the arrest is no longer an arrest, but a detention only.

Arrests that are released by law enforcement per 849(B) or 859.5 Penal Code (Prosecutor Reject).

Prosecutor Releases (Rejects) fall under 849.5 Penal Code. These are arrests without filing of accusatory pleading or record. The arrest is deemed a detention.

Rap Sheet Entry Example:

- Pros Rel – Det Only – Reason
  This translates to Prosecutor Release – Detention Only – For any reason such as Lack of Evidence

☑ Finding of Factual Innocence
☑ Infraction
☑ Conviction

7-1811 COUNTY LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1811**

- If the subject was convicted of a non-exemptible crime, (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100), send the Non-Exemptible Conviction (CBCB 6.1) and the Non-Exemptible Conviction Applicant/Licensee or Family Member (CBCB 6.0), notices.
-
    - If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► Arrests With The Following Dispositions MAY Be Investigated

☑ Diversion

See Evaluator Manual Section 7-1540

In addition, an arrest for a crime **not** listed in the Non Exemptible crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2100), the Additional Arrests Requiring Investigation crimes list (Evaluator Manual, Reference Material, Background Check Procedures, Section 7-2125) or Federal Crimes lists for Foster Family and Certified Family Homes (Evaluator Manual, Reference Material, Background Check Procedures, Sections 7-2110 and 7-2115) **may** be investigated, if the County Licensing Agency determines that, based on the known facts of the case, the subject's conduct or character may pose a risk to the health and safety of clients in care.

► Arrests With The Following Dispositions MUST Be Investigated:

☑ Complainant Refused Prosecution
☑ Bail Exonerated
☑ All Juvenile arrest only entries including those where minor was released to parent or guardian
☑ Acquitted or Not Guilty
☑ Prosecutor filed a criminal complaint but later dismissed it
☑ Any other disposition not exempted above

Processing Procedures for Subsequent Arrest Cases – Step 3

- If the subject is the licensee or license applicant, spouse of the licensee or a dependent family member update case file send a Notice of Investigation (AO 6) to the subject informing him/her that an investigation is being conducted.

- If the subject is a potential employee, current employee or a non-client adult resident, send the Notice of Investigation Employee/Resident (AO 8b) to subject informing him/her that an investigation is being conducted. If the subject returns the AO 8b notice and indicates that he/she does not want the investigation to continue, close the case.

7-1811 COUNTY LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1811**

Processing Procedures for Referable Subsequent Arrest Cases – Step 4

If an investigation is warranted:

- Request and review information contained in the subject's personnel file
- Obtain a copy of the arrest report and evaluate the subject's role in the crime. Subjects frequently make statements to the police that are documented in the arrest reports
- Contact witnesses to see if they will testify in an administrative hearing
- Interview the subject for additional information or ask that the subject provide the disposition and arrest information
- Prepare a report documenting all actions and findings
- Document the results of your investigation. Keep notes of all contacts
- Ensure the privacy of the investigation and subject. All arrest-only investigation documents are confidential and must be kept in the confidential section of the facility folder.
- Discuss case with Regional County Liaison and consulting attorney for possible Administrative Action as **conduct inimical**

Processing Procedures After Investigation Has Been Completed

Substantiated Case Procedures:

1. Prepare Case Analysis Worksheet with a recommendation for an immediate exclusion, non-immediate exclusion, no action (maintain clearance).
2. Forward to a supervisor for review. The supervisor will review all case analysis documents and may discuss with the analyst or consulting attorney for additional information or advice on recommendation.

7-1811 COUNTY LICENSING: ARRESTS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1811**

3. Document all discussions and issues on a contact sheet and place in the case file. Sign full name legibly on all documentation.

4. If applicable complete a Statement of Facts. Prepare a case for each action required, i.e. exemption rescission, license revocation. For example, if the subject has a previous exemption, prepare an "A" case which excludes the subject, and a "B" case which rescinds the exemption. Obtain required approval signatures.

5. Prepare and distribute exclusion documents as follows:

   Immediate Exclusions

   - Prepare Immediate Exclusion Order (Order) and obtain all required signatures for approval
   - Serve the Order on the subject and, if the subject and the licensee are not one in the same, give a copy to the licensee
   - Prepare a Declaration of Service form for each person to whom the Order was served
   - If subject appeals within the required 15 days from the date of the Order, immediately forward appeal to the Legal Division
   - If subject does not appeal, determine if "For The Record" action is needed. See Evaluator Manual, Reference Material, Background Check Procedures, Section 1-1417

   Non-immediate Exclusions

   - Forward case file with completed Statement of Facts to the Legal Division

The Legal Division will assign an attorney to prepare an accusation that will notify the subject of the action and the due date for the Notice of Defense.

7-1812 WARRANTS **7-1812**

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

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

Before an exemption is denied, the licensing agency must contact the court or agency that issued the warrant to determine if the warrant is still outstanding or valid. If the warrant is for a nonviolent misdemeanor then an exemption may be approved. If the warrant is for an exemptible violent misdemeanor or a pattern of behavior exists then do not approve the exemption.

Initial Inquiry Only

- Contact the court(s) or review its web site to determine if the warrant is valid, current or active or resulted in a conviction.
- If the subject is a TrustLine applicant, close TrustLine case with a TL-10 notice.
- If the subject is a license applicant, close case and send CBCB 9.1 notice.

If the licensing agency becomes aware, either through a subsequent rap sheet or any other means, that the subject has an outstanding warrant and the subject has been granted an exemption;

The Caregiver Background Check Bureau must:

- Contact the licensee to determine if the subject is still at the facility. If not, disassociate. If yes, continue.
- Contact the court(s) or review its web site to determine if the warrant is valid, current or active or resulted in a conviction.
- Notify the Licensing Program Analyst at the Regional Office that the subject has an outstanding warrant.
- Clear if warrant is for a non-violent misdemeanor (see Evaluator Manual Section 7-2150). Refer for investigation if warrant is for an exemptible felony or violent misdemeanor (see Evaluator Manual Section 7-2125).
- Consult Legal for possible administrative action based on "conduct inimical".
- Consider contacting the law enforcement agency that issued the warrant and advise them that the Department is aware of the current work site of the subject.

County licensing agencies must:

- Contact the licensee to determine if the subject is still in the home. If not, close case. If yes, continue.
- Contact the court(s) to determine if the warrant is valid, current or active or resulted in a conviction.

7-1812 WARRANTS (Continued) **7-1812**

- Clear if warrant is for a non-violent misdemeanor (see Evaluator Manual Section 7-2150). Investigate if warrant is for an exemptible felony or violent misdemeanor (see Evaluator Manual Section 7-2125).

- Consult with the Regional County Liaison for possible administrative action based on "conduct inimical".

- Consider contacting the law enforcement agency that issued the warrant and advise them that the licensing agency is aware of the current residence/work site of the subject.

7-1815 IMMEDIATE REMOVAL FROM FACILITY 7-1815

CONVICTIONS:

If an employee, non-client resident or a non-dependent family member (here after referred to in this section as "subject") was allowed in the facility because he/she had a clearance or a criminal record exemption and the licensing agency subsequently receives a rap sheet containing a conviction, the licensing agency must determine if the affected subject can continue to be present in the facility while the conviction information is evaluated.

Statute requires that all subjects convicted of a non-exemptible crime, be immediately removed or barred from any licensed facility (See Evaluator Manual Section 7-2100, Non-Exemptible Crimes). Subjects convicted of a non-exemptible crime, and the licensee of the facility with which they are associated, must be sent a letter (CBCB6.1 and 6.1C) informing them that the subject's conviction is non-exemptible and that he/she may no longer work, reside or be present in the facility. See Evaluator Manual Appendix H for letter sample. County licensing agencies see Evaluator Manual Section 7-1000, Counties Under Contract to Provide Licensing Services for letter modification instructions.

Subjects convicted of any crime listed below or a felony that is exemptible, must be removed pending an exemption decision. These subjects and the licensee of the facility with which they are associated must be sent a letter (CBCB3, 3C, 3.1 and 3.1C) informing them that the subject must be removed and that an exemption must be obtained before the subject can return to the licensed facility. A fiancé or domestic partner with whom the applicant/licensee has children in common shall be considered spouses. County licensing agencies must also complete and send a Confirmation of Removal Notice (LIC 300E) with the CBCB3 or 3.1. See Evaluator Manual Sections 7-1820 and 1821, Convictions Subsequent to Clearance or Exemption, for variations if the subject is a licensee, spouse or dependent adult who resides in the facility. County licensing agencies see Evaluator Manual Section 7-1000, Counties Under Contract to Provide Licensing Services for letter modification instructions.

Removals are not limited to persons with convictions for non-exemptible crimes or convictions for crimes listed below. A subject with a misdemeanor who poses a risk to clients because of the seriousness, recency, and/or pattern of the crime may be removed from the facility pending an exemption decision. Removals do not have to be limited to crimes against a person and/or physical harm. Fiduciary crimes may also warrant removal depending upon such factors as facility type, recency or pattern.

If a subject is employed by a facility that is part of a larger compound, the subject can only be removed from the portion of the compound that is licensed by Community Care Licensing Division or placed in other employment that would not require that the person have a background clearance.

In addition to subjects convicted of crimes specified in Health & Safety Code §1522(c)(3), 1568.09(c)(4), 1569.17(c)(3), and 1596.871(c)(2), subjects convicted of one of the following violent misdemeanors, must also be immediately removed or barred from any licensed facility to which they are associated until a criminal record exemption is granted:

7-1815 IMMEDIATE REMOVAL FROM FACILITY (Continued) **7-1815**

Type of Crime	Penal Code Section
Battery	242 through 243.9
Shooting at Inhabited Dwelling	246
Degrading, immoral, or vicious practices or habitual drunkenness in presence of children	273g
Corporal Injury on Spouse/Cohabitant	273.5
Discharging firearm with Gross Negligence	246.3
Exhibiting Weapon/Firearm	417
Threat to commit a crime resulting In Great Bodily Injury or Death	422
Criminal Threat to Harm or Injure Another person	71, 76
Cruelty to Animals	597
Willful Harm or Injury to Child (Includes all unlawful corporal punishment and other crimes where immediate exclusion not already required. Victim must be a child.)	For example, 273.6(b) or (e), 273.65(b), 309, 310.2, 11414. This list is not exhaustive and requires a case by case analysis of the code section listed on the rap sheet.

Removals for convictions other than those identified above must be approved by a Manager. County licensing agencies see Evaluator Manual Section 7-1000, Counties Under Contract to Provide Licensing Services for letter modification instructions.

ARRESTS:

If a subject was allowed in the facility because he/she had a clearance or a criminal record exemption and the licensing agency subsequently receives a rap sheet containing an arrest but no convictions, the subject must be allowed to remain in the facility while the underlying conduct is investigated. For state licensing see Evaluator Manual Section 7-1810, Arrest –Subsequent to Clearance or Exemption. For county licensing see Evaluator Manual Section 7-1811.

If, as a result of an investigation, it has been found that a subject has demonstrated conduct that is inimical to the health and safety of clients, an exclusion action shall follow. For state licensing see Substantiated Conduct Inimical Procedures in Evaluator Manual Section 7-1535. For county licensing see Evaluator Manual Section 7-1536.

Once the Licensing Agency has ordered a person out of the facility, the Licensing Program Analyst (LPA) is required to follow up and ensure that the person is not present in the facility. Verification action must occur within 30 days of the removal/exclusion order. Most often, verification will require a follow up visit. Sometimes verification may be obtained by other means. Verification by a means other than a visit must be approved by the Licensing Program Manager (LPM). Whatever verification action is taken, documentation of the action must be kept in the facility file. If the removed or excluded person is found to be in the facility, immediate steps must be taken to revoke the license.

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION 7-1820

The Department of Justice will continue to send the licensing agency subsequent conviction information unless otherwise notified by the licensing agency.

If the rap sheet includes a subsequent conviction and the subject's status on LIS is Active-Not Working (not associated to any facility) change the subject's status to No Longer Interested and consider a rescission as specified in this Section (7-1820). If decision is made not to rescind, close, Agency Initiated. See Evaluator Manual Section 7-2000 for file retention rules.

If a subject's status is Active-Working (associated to any facility) and a subsequent rap sheet with convictions is received, follow the procedures below.

Non-Exemptible Conviction – Licensee / Spouse / Dependent Family Member

If a licensee has been convicted of a crime that is non-exemptible (see Evaluator Manual Section 7-2100; and if facility is a foster family home also see Evaluator Manual Section 7-2110 and 7-2115) the license must be revoked. If the individual is a certified foster parent, follow employee/resident procedures. If spouse or dependent family member has been convicted of a non-exemptible crime, and the facility is the spouse or dependent family member's place of residence, the license must be revoked. A spouse includes a fiancé or domestic partner with whom the applicant/licensee has children in common.

The Caregiver Background Check Bureau Responsibilities:

- Send the field notification letter (cbcb6.0), and Regional Office response form to the Regional Office. The cbcb6.0 must identify the documents or materials relied upon to make the determination. This will usually be the state summary criminal history information received from the Department of Justice. In addition, the letter must list the non-exemptible conviction(s) and if known, the approximate date and court location where the conviction occurred.

- Be available to consult with the Legal Division and the Regional Office regarding a Temporary Suspension Order.

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

The Regional Office Responsibilities:

- Consult with the Legal Division and the Program Office regarding a Temporary Suspension Order or an expedited revocation.

  Because the conviction is for a non-exemptible offense, the case must always be referred for a Temporary Suspension Order or an expedited revocation. As with all Temporary Suspension Order requests, the consulting attorney will contact the Attorney General's Office before a Temporary Suspension Order is filed.

  In most cases, the presumption should be that a Temporary Suspension Order will be issued. In all cases, if the subject is determined to present a risk to clients, a Temporary Suspension Order will be initiated. However, if it is determined that the subject does not present a risk to clients, the licensing office may consider using an expedited revocation as discussed below.

  If it is decided by the Regional Manager and consulting attorney not to proceed with a Temporary Suspension Order, the Regional Manager will consult with the Program Office Administrator (or designee) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

- Send the licensee and the subject a letter informing them that the Department has received a rap sheet containing a non-exemptible conviction and that the license has been referred to the legal division for revocation (use cbcb6.0 Template Letter 2, 2a or 2b found in the common library). The letter to the subject must identify the documents or materials relied upon to make the determination. This will usually be the State Summary Criminal History Information received from the Department of Justice. In addition, the letter must list the non-exemptible conviction(s) and, if known, the approximate date and court location where the conviction occurred as provided by CBCB on the cbcb6.0 notice

- Complete and return the Regional Office response form to the Caregiver Background Check Bureau within ten (10) days of the date of the field notification letter (cbcb6.0).

  If the revocation is based solely on the non-exemptible conviction, send the Caregiver Background Check Bureau a copy of the LIC 200, LIC 508 (if not previously sent) and the license with the Regional Office response form. The Caregiver Background Check Bureau will prepare the Statement of Facts.

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

Non-Exemptible Conviction – Employee / Resident

The Caregiver Background Check Bureau Responsibilities:

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the subject was convicted of a non-exemptible conviction and must be immediately removed from the facility. Ask the licensee for the subject's last known address.

- Send separate and concurrent follow-up letters to the licensee (cbcb6.1) and the subject (cbcb6.1 C) specifying the above. The letter to the subject must list his/her non-exemptible convictions. The confirmation of Removal Notice (LIC 300E) is attached to the cbcb6.1 letter.

- In addition, if the facility is a Family Child Care Home,
  - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B)
  - ✓ send a copy of the form to the licensee with the cbcb6.1 letter.
  - ✓ file a copy of the LIC 995B in the subject's case file
  - ✓ send a copy of the LIC 995B and the cbcb6.1 letter to the Regional Office.

The Regional Office Responsibilities:

- Consult Legal for a possible Temporary Suspension Order if the subject is not removed from the facility.

Felonies – 5-Year Ban – Foster or Certified Family Home

If a licensee of a foster or certified family home has been convicted of a federal 5-year ban crime listed in Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, the license must be revoked. If an adult residing in the home has been convicted of a federal 5-year ban crime listed in Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, and the home is the individual's place of residence, the license must be revoked.

If a non-dependent family member or a non-client resident has been convicted of a federal 5-year ban crime listed in Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, the individual cannot move into the home or must be removed from the home.

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

The Caregiver Background Check Bureau Responsibilities:

- Send the field notification letter (cbcb22.5), and Regional Office response form to the Regional Office. The cbcb22.5 must identify the documents or materials relied upon to make the determination. This will usually be the state summary criminal history information received from the Department of Justice. In addition, the letter must list the crime, date and court location where the conviction occurred.

- Be available to consult with the Legal Division and the Regional Office regarding a Temporary Suspension Order.

The Regional Office Responsibilities:

- Consult with the Legal Division and the Program Office regarding a Temporary Suspension Order or an expedited revocation.

  Because the person was convicted of a federal 5-year ban crime listed in Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, the case must always be referred for a Temporary Suspension Order or an expedited revocation. As with all Temporary Suspension Order requests, the consulting attorney will contact the Attorney General's Office before a Temporary Suspension Order is filed.

  In most cases, the presumption should be that a Temporary Suspension Order will be issued. In all cases, if the subject is determined to present a risk to clients, a Temporary Suspension Order will be initiated. However, if it is determined that the subject does not present a risk to clients, the licensing office may consider using an expedited revocation as discussed below.

  If it is decided by the Regional Manager and consulting attorney not to proceed with a Temporary Suspension Order, the Regional Manager will consult with the Program Office Administrator (or designee) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

- If the subject is the licensee or dependent family member inform the licensee of the license revocation. Use the cbcb22.5 Template letter 2 or 2a &2b (found in the common library) to draft a letter to the licensee and the subject. The letter to the subject must identify the documents or materials relied upon to make the determination. This will usually be the State Summary Criminal History Information received from the Department of Justice. In addition, the letter must list the federal 5-year ban conviction(s) and, if known, the approximate date and court location where the conviction occurred as provided by CBCB on the cbcb22.5 notice.

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

- Complete and return the Regional Office response form to the Caregiver Background Check Bureau within ten days of the date of the field notification letter (cbcb22.5).

  If the revocation is based solely on the 5-year ban conviction, send the Caregiver Background Check Bureau a copy of the LIC 200, LIC 508D (if not previously sent) and the license with the Regional Office response form. The Caregiver Background Check Bureau will prepare the Statement of Facts.

- If the individual is a non-dependent family member or a non-client adult resident confirm that the individual has been removed from the facility. (The Regional Office will receive a copy of the notice, cbcb22.5 ffh.) If the licensee allows the individual to move into or remain in the home, assess civil penalties and initiate an administrative action to revoke the license.

Exemptible Felony / Violent Misdemeanor

Rescission

If an individual has an existing exemption and the Department receives a rap sheet with a new conviction, a rescission of the existing exemption, without allowing the individual to request an exemption for the new conviction, may be considered.

All rescissions must have Unit Manager, Bureau Chief and Legal approval.

The following factors must be considered before a decision to rescind is made:

- Nature and severity of crime
- Whether a pattern of criminal behavior exists
- Recency of new conviction
- Recency of existing exemption
- Nexus to crime for which existing exemption was granted
- Whether exemption conditions, in addition to the no subsequent conviction condition, were violated

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

Exemptible Felony / Violent Misdemeanor- Licensee / Spouse / Dependent Family Member *Subsequent to a clearance or subsequent to an exemption if decision has been made not to rescind existing exemption*

The Caregiver Background Check Bureau Responsibilities:

- Send the field notification letter and Regional Office response form (cbcb2.2FN) to the Regional Office. The letter instructs the Regional Office to respond within five (5) working days.

  If the Regional Office responds that they are in the process of denying the license application, do not send an exemption needed notice. The legal division will inform the Caregiver Background Check Bureau of the final disposition.

  If the Regional Office responds that they are in the process revoking the license or issuing a Temporary Suspension Order (TSO) to close the facility, do not send an exemption needed notice. The legal division will inform the Caregiver Background Check Bureau of the final disposition.

  If the Regional Office responds that they are not taking any administrative action on the subject, send an exemption needed notice to the applicant/licensee and the subject.

- Be available to consult with the Legal Division and the Regional Office, whether to issue a Temporary Suspension Order to allow the facility to remain open while the licensee seeks an exemption.

The Regional Office Responsibilities:

- Consult with the Legal Division and the Program Office regarding a Temporary Suspension Order or an expedited revocation.

  For felonies and misdemeanors that require immediate removal, the Regional Manager and the consulting attorney will discuss and determine whether the case should be referred for a Temporary Suspension Order or revocation or whether a decision on legal action should be postponed until Caregiver Background Check Bureau has processed the exemption request.

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

If the conviction is for a nonviolent felony, the Regional Manager and the consulting attorney will discuss and determine whether the case should be referred for a revocation, or whether a decision on legal action should be postponed until Caregiver Background Check Bureau has processed the exemption request. The Regional Manager and attorney should consider whether the subject is likely to obtain an exemption in making their assessment.

For some convictions, it may be necessary to obtain a police report and evaluate the underlying facts of the crime prior to making a decision as to the action to be taken.

For any crime involving violence or a crime against children or dependent adults, if the Regional Manager and attorney decide not to proceed with a Temporary Suspension Order, the Regional Manager will consult with the Program Administrator (or designee) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

If the decision is to seek revocation, the subject will be allowed to remain in the facility pending action on the expedited revocation. In these cases, an exemption is not processed by Caregiver Background Check Bureau and the subject receives their appeal rights through the revocation process.

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

- Respond to the Caregiver Background Check Bureau, via the Regional Office response form (cbcb2.2FN), within five (5) working days.

- If the revocation is based solely on the exemptible conviction, send the Caregiver Background Check Bureau a copy of the LIC 200, LIC 508 (if not previously sent) and the license with the Regional Office response form. The Caregiver Background Check Bureau will prepare the Statement of Facts.

- Contact the licensee and inform them that the Department has received a rap sheet with a felony/serious misdemeanor conviction. Type of contact, either by phone or in person, is up to the discretion of the Regional Office.

Exemptible Felony / Violent Misdemeanor – Employee / Resident - ***Subsequent to a clearance or subsequent to an exemption if a decision has been made not to rescind an existing exemption***

7-1820 STATE LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1820**

The Caregiver Background Check Bureau Responsibilities:

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the subject was convicted of an offense that requires immediate removal from the facility until an exemption is granted. Ask the licensee for the subject's last known home address.
- Send separate and concurrent notices to the licensee (cbcb3 or 3.1) and the subject (cbcb3C or 3.1C) at his/her current home address specifying the above. The notice to the subject must list his/her conviction(s). The confirmation of Removal Notice (LIC 300E) is attached to the cbcb6.1 letter.
- In addition, if the facility is a Family Child Care Home,
  - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B)
  - ✓ send a copy of the form to the licensee with the cbcb3 or 3.1 letter.
  - ✓ file a copy of the LIC 995B in the subject's case file
  - ✓ send a copy of the LIC 995B and the cbcb3 or 3.1 letter to the Regional Office.
- If applicable, process the exemption request.

The Regional Office Responsibilities:

- Consult Legal for a possible Temporary Suspension Order if the subject is not removed from the facility.

Other Exemptible Offenses

If the conviction is not for a non-exemptible crime, the licensing agency must inform the licensee (cbcb2.1) and the subject (cbcb2.1 C) in separate and concurrent notices that an exemption is required. The notice to the subject must list his/her conviction(s). It is not necessary to remove a subject convicted of a misdemeanor, except for those listed in Evaluator Manual Section 7-1815; however, it is necessary to issue a notice specifying that an exemption is required.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION 7-1821

The Department of Justice will continue to send the licensing agency subsequent conviction information unless otherwise notified by the licensing agency.

If the rap sheet includes a subsequent conviction and the individual is no longer associated to the home, consider a rescission as specified in Evaluator Manual Section 7-1820. If decision is made not to rescind, close the case. Indicate "No Longer Interested" on the rap sheet and return to the Department of Justice. See Evaluator Manual Section 7-2000 for file retention rules.

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

Non-Exemptible Conviction – Licensee / Spouse / Dependent Family Member

If a licensee has been convicted of a crime that is non-exemptible (see Evaluator Manual Section 7-2100 if facility is a foster family home also see Evaluator Manual Section 7-2110) the license must be revoked. If an adult residing in the home has been convicted of a non-exemptible crime, and the facility is the individual's place of residence, the license must be revoked.

- Within seven days of receipt of the rap sheet, consult the Program County Liaison who will consult the Legal Division for a Temporary Suspension Order or an expedited revocation.

  Because the conviction is for a non-exemptible offense, the case must always be referred for a Temporary Suspension Order or an expedited revocation. County licensing agencies who license Foster Family Homes must inform the County Placement Agency that foster children must be removed and that a Temporary Suspension Order or an expedited revocation is warranted. As with all Temporary Suspension Order requests, the consulting attorney will contact the Attorney General's Office before a Temporary Suspension Order is filed. In most cases, the presumption should be that a Temporary Suspension Order will be issued. In all cases, if the subject is determined to present a risk to clients, a Temporary Suspension Order will be initiated.

- If it is decided that a Temporary Suspension Order is appropriate, prepare the Statement of Facts and Closure Report. Coordinate with the county liaison to ensure all required documents are sent to the assigned consulting attorney.

- However, if it is determined that the subject does not present a risk to clients, the county licensing office may consider using an expedited revocation as discussed below.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1821**

- If the County Program Manager or delegate, the consulting attorney and county liaison decide not to proceed with a Temporary Suspension Order, the county liaison will consult with the Community Care Licensing Division Program Office Administrator (or delegate) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

- Send the licensee and the subject a letter informing them that the County has received a rap sheet containing a non-exemptible conviction and that the license has been referred to the Community Care Licensing Legal Division for revocation. The letter to the subject must identify the documents or materials relied upon to make the determination. This will usually be the state summary criminal history information received from the Department of Justice. In addition, the letter must list the non-exemptible conviction(s) and, if known, the approximate date and court location where the conviction occurred. Use cbcb6.0 Template 2, 2a or 2b. See Appendix H for a sample.

Non-Exemptible Conviction – Employee / Resident

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the subject was convicted of a non-exemptible crime and must be immediately removed from the facility. Ask the licensee for the subject's last known address.

- Send separate and concurrent follow-up letters to the licensee (cbcb6.1) and the subject (cbcb6.1 C) specifying the above. The letter to the subject must identify the documents or materials relied upon to make the determination. This will usually be the state summary criminal history information received from the Department of Justice. In addition, the letter must list the non-exemptible conviction(s) and, if known, the approximate date and court location where the conviction occurred. County licensing agencies see Evaluator Manual 7-1000 for letter modification instructions.

- Send a Confirmation of Removal Notice (LIC 300E) to the licensee with the cbcb6.1 letter.

- In addition, if the facility is a Family Child Care Home,

  - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B).

  - ✓ send a copy of the form to the licensee with the removal letter.

  - ✓ file a copy of the LIC 995B in the subject's case file.

Consult the Program County Liaison who will consult the Legal Division for possible Temporary Suspension Order if the subject is not removed from the facility.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1821**

Felonies – 5-Year Ban – Foster Family Home

If a licensee of a foster or certified home has been convicted of a federal 5-year ban crime listed in Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, the license must be revoked. If an adult residing in the home has been convicted of a federal 5-year ban crime listed in the Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, and the home is the individual's residence, the license must be revoked.

Consult with the County Liaison who will consult with the Legal Division regarding a Temporary Suspension Order or an expedited revocation.

Because the person was convicted of a federal 5-year ban crime listed in Evaluator Manual Section 7-2115 and the conviction occurred within the last five years, the case must always be referred for a Temporary Suspension Order or an expedited revocation. As with all Temporary Suspension Order requests, the consulting attorney will contact the Attorney General's Office before a Temporary Suspension Order is filed.

In most cases, the presumption should be that a Temporary Suspension Order will be issued. In all cases, if the subject is determined to present a risk to clients, a Temporary Suspension Order will be initiated. However, if it is determined that the subject does not present a risk to clients, the licensing office may consider using an expedited revocation as discussed below.

If the County Program Manager or delegate, the consulting attorney, and county liaison decide not to proceed with a Temporary Suspension Order, the county liaison will consult with the Program Office Administrator (or designee) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

If the individual is a non-dependent family member or a non-client adult resident, confirm that the individual has been removed from the facility. If the licensee allows the individual to move into or remain in the home, then assess civil penalties and initiate an administrative action to revoke the license.

Exemptible Felony / Violent Misdemeanor

Rescission

If an individual has an existing exemption and the Department receives a rap sheet with a new conviction, a rescission of the existing exemption, without allowing the individual to request an exemption for the new conviction, may be considered.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1821**

All rescissions must have county equivalent of Unit Manager, Bureau Chief and Legal approval.

The following factors must be considered before a decision to rescind is made:

- Nature and severity of crime
- Whether a pattern of criminal behavior exists
- Recency of new conviction
- Recency of existing exemption
- Nexus to crime for which existing exemption was granted
- Whether exemption conditions, in addition to the no subsequent conviction condition, were violated

Exemptible Felony / Violent Misdemeanor – Licensee / Spouse / Dependent Family Member *Subsequent to a clearance or subsequent to an exemption if decision has been made not to rescind existing exemption*

- Contact the licensee by telephone informing the licensee that the County has received a rap sheet containing a felony/serious misdemeanor conviction.
- Decide, in consultation with the Program County Liaison, whether to issue a Temporary Suspension Order or allow the facility to remain open while the licensee seeks an exemption.

  For felonies and misdemeanors that require immediate removal, the County Program Manager or delegate, consulting attorney and county liaison will discuss and determine whether the case should be referred for a Temporary Suspension Order or revocation or whether a decision on legal action should be postponed until the county licensing office has processed the exemption request.

  If the conviction is for a nonviolent felony, the County Program Manager or delegate, consulting attorney and county liaison will discuss and determine whether the case should be referred for a revocation, or whether a decision on legal action should be postponed until the county licensing office has processed the exemption request. The Program Manager or delegate, consulting attorney and county liaison should consider whether the subject is likely to obtain an exemption in making their assessment.

  For some convictions, it may be necessary to obtain a police report and evaluate the underlying facts of the crime prior to making a decision as to the action to be taken.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1821**

For any crime involving violence or a crime against children or dependent adults, if it is decided by the County Program Manager or delegate, the consulting attorney and county liaison not to proceed with a Temporary Suspension Order, the County Program Manager will consult with the Program Administrator (or delegate) to confirm the type of action to be taken. In these situations, if there is no immediate risk to clients identified, it would be appropriate to pursue an expedited revocation.

If the decision is to seek revocation, the subject will be allowed to remain in the facility pending action on the expedited revocation. In these cases, an exemption is not processed by the county licensing office and the subject receives their appeal rights through the revocation process.

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

Exemptible Felony / Violent Misdemeanor – Employee / Resident *Subsequent to a clearance or subsequent to an exemption if a decision has been made not to rescind existing exemption.*

- Make a reasonable attempt to contact the licensee by telephone informing the licensee that the subject was convicted of a felony/serious misdemeanor crime and must be immediately removed from the facility. Ask the licensee for the subject's last known home address.

- Send separate and concurrent notices to the licensee (cbcb3 or 3.1) and the subject (cbcb3C or 3.1C) at his/her current home address specifying the above. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions. The notice to the subject must list his/her conviction(s). The confirmation of Removal Notice (LIC 300E) is attached to the CBCB3 and the 3.1 letter.

- In addition, if the facility is a Family Child Care Home

  - ✓ complete a Family Child Care Home - Notification of Parent's Rights Addendum to Remove/Exclude (LIC 995B)

  - ✓ send a copy of the form to the licensee with the cbcb3 or 3.1 letter

  - ✓ file a copy of the LIC 995B in the subject's case file

- Consult the Program County Liaison who will consult with legal for a possible Temporary Suspension Order if the subject is not removed from the facility.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) 7-1821

Other Exemptible Offenses

If the conviction is for a crime other than a non-exemptible crime, the licensing agency must inform the licensee (cbcb2.1) and the subject (cbcb2.1 C) in separate and concurrent notices that an exemption is required. The notice to the subject must list his/her conviction(s). It is not necessary to remove a subject convicted of a misdemeanor, except for those listed in Evaluator Manual Section 7-1815; however, it is necessary to issue a notice specifying that an exemption is required. County licensing agencies see Evaluator Manual Section 7-1000 for letter modification instructions.

7-1900 ADMINISTRATIVE ACTIONS 7-1900

An Administrative Action refers to the steps necessary to present a case at an Administrative Hearing. Such hearings may result in the denial of a license or TrustLine application, or revocation of a license or TrustLine registration. Hearings are also used to resolve whether an employee or other persons should be excluded from a licensed facility or the TrustLine Registry.

The following is a list of actions which may be considered by the licensing agency in response to a criminal history report (initial or subsequent) or upon verification of a conviction for a licensee/spouse, applicant/spouse or employee. The type of action taken should be based upon the potential harm to the clients and the severity of the conviction or arrest. Please see Evaluator Manual Section 1-1000 through 1-1450 for expanded descriptions and information on the enforcement actions listed below.

I. **Applicant/Spouse/Dependent Family Member**

a. **Injunctive Relief**
This process results in the immediate closure of a facility operating without a license. An injunction order is obtained from the Superior Court.

b. **License Application Denial**
If the person with a non-exemptible conviction, denied exemption or substantiated conduct inimical is an applicant, the license application will be denied.

II. **Licensee/Spouse/Dependent Family Member for Subsequent Conviction Information**

a. **Temporary Suspension Order**
A Temporary Suspension Order results in the immediate closure of a facility by temporarily suspending all operations. A Temporary Suspension Order must be approved by the Community Care Licensing Division Deputy Director and becomes effective upon service.

7-1900 ADMINISTRATIVE ACTIONS (Continued) **7-1900**

b. **License Revocation**
A license may be revoked when an exemption is denied or rescinded or conduct inimical has been substantiated. The revocation does not become effective until the action is approved and adopted following a formal decision to revoke the license, such as after an administrative hearing or through Stipulation.

III. **Employee or other Adult with Client Contact**

a. **Employee/Other Adult Exclusion**
An employee/other adult exclusion is based on a denied exemption or substantiated conduct inimical. If an exemption request has been denied or conduct inimical has been substantiated, the employee/other adult must be excluded from the facility. All exclusions must be approved by the Legal Division. Please see Evaluator Manual Section 1-1400, Non Licensee Administrative Actions.

Immediate Exclusion
If the employee/other adult is still working in the facility or still has contact with clients in care, the employee/other adult must be immediately excluded from the facility. This means the employee/other adult is removed from the facility prior to an administrative hearing and the licensee must verify, in writing, that the individual has in fact been removed. Please see Evaluator Manual Section 1-1415, Immediate Exclusion Order Prior To Hearing.

Non-Immediate Exclusion or Exclusion For The Record
If the employee/other adult is not currently working in or associated to any licensed facility, an exclusion for the record may be taken to prevent this individual from seeking employment or residency in another facility. Please see Evaluator Manual Section 1-1417, Exclusions "For the Record".

NOTE: Do not confuse an employee exclusion with a removal (see Evaluator Manual Section 7-1815, Immediate Removal From Facility). A removal is not an Administrative Action because a final exemption decision has not been made.

State Licensing
When an Administrative Action is in progress or has been completed, the LIS/CBC will have a red flashing AA indicator.

If the Administrative Action is background check related, the AA flag will prevent an individual's subsequent rap or clearance from automatically registering on the CBC through the DOJ interface. AA cases require careful review because of their impact on an exemption decision or transfer and on the individual's eligibility to be TrustLine registered.

If the action has been completed, obtain the Decision and Order (D&O) and review the date of the decision, the type of action (i.e. lifetime exclusion, probation) and conditions if any.

TrustLine Applicants
If the type of action taken is any one of the following:

- Life time or 2 year exclusion,
- License or TrustLine denial,
- Conviction of a Non-exemptible crime,
- License or TrustLine revocation,

close the case and send the applicant the appropriate corresponding letter below:

TLR 22 A (CCL Exclusion)
TLR 22 B (CCL Denial)
TLR 22 C (CCL Non-Exemptible)
TLR 22 D (CCL Revocation)

Note: If the D&O indicates an action other than those noted above, review case with your manager.

If the Administrative Action does not affect TrustLine registration, note ”okay to enter” at the top of the application, initial and return the application along with the D&O to a designated AOSS staff person.

Licensure by both State and County

The California Department of Social Services has a contractual relationship with several counties to provide licensing services. Counties under this agreement are responsible for issuing Foster Family Home and/or Family Child Care Home licenses. The Community Care Licensing Division has this responsibility in other non-contracted counties. This situation creates the possibility of a subject having both a county and a State license.

The possibility of this dual licensing requires special coordination between the county and State. Once the county licensing agency has made a decision to deny or revoke a criminal record exemption the county licensing agency must contact their Program Office County Liaison to inform them of the intended action. The Program Office County Liaison will check for the existence of a license issued by Community Care Licensing Division. If dual licensing exists, the Program Office County Liaison will notify the appropriate Regional Office of the pending action.

7-2000 CRIMINAL RECORD INFORMATION RETENTION 7-2000

State Licensing- CBCB

Active-Working – Associated to a Facility
All exemption files and support documentation must be retained indefinitely.

Active-Not-Working - Not Associated to Any Facility
All exemption files and support documentation must be retained for five (5) years and archived for an additional fifteen (15) years (standard file retention rules) after the subject is no longer associated with the facility.

Licensing Regional Offices must retain all exemption information received from the Caregiver Background Check Bureau in the facility file with which the subject is or was associated.

County Licensing

Currently Licensed Or Residing In A Licensed Home
All exemption files and support documentation must be retained indefinitely.

No Longer Licensed Or No Longer Residing In A Licensed Home
All exemption files and support documentation must be retained for five (5) years and archived for an additional fifteen (15) years (standard file retention rules) after the subject is no longer licensed or residing in the home.

7-2010 CONFIDENTIALITY OF CRIMINAL HISTORY INFORMATION 7-2010

Penal Code Section 11505(b)(9) provides that the Department of Justice may provide criminal history information to Community Care Licensing Division for licensure because of the criminal clearance requirements in Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871.

An individual, who has been denied a criminal record exemption, has a right to request a copy of his/her state and/or federal Criminal Offender Record Information (CORI) search response (rap sheet). To request a copy the individual must send a written request to the licensing agency within fifteen (15) days of the date of the denial letter. The written request must be dated and signed and must specify where the rap sheet is to be sent. This is an exception to Penal Code Section 11142 that prohibits the licensing agency from furnishing such information to an agency not authorized by law to receive it.

Conditions of the release of rap sheet:

Release is only authorized to the individual when information from the rap sheet is the basis for an administrative action (i.e., exemption denial, exemption revocation, or exclusion action based on arrest-only information). In order to protect confidentiality and privacy, all of the following conditions must be met:

7-2010 CONFIDENTIALITY OF CRIMINAL HISTORY INFORMATION 7-2010
(Continued)

- The licensing agency denied or is revoking a criminal record clearance or exemption, or is excluding an individual based on arrest-only information contained in the rap sheet.
- The licensing agency is in receipt of a written request, by the individual, to whom the rap sheet pertains, asking for a copy of the rap sheet. As with DOJ procedures, the request must be dated and signed by the individual.
- The request must specify an address to which the rap sheet is to be sent.
- The rap sheet remains in its original form or content as it is provided to the licensing agency by DOJ. The rap sheet cannot be redacted.
- The rap sheet is sent only to the address specified by the individual.
- A copy of the request, the response to the specified address, and the date provided shall be retained by the licensing agency.

The Penal Code prohibits the licensing office from sharing criminal history information with the subject's employer or co-applicant or co-licensee, even if that person is the subject's spouse. Licensees and co-applicants, etc. can only be told that:

- The subject has a criminal history.
- That the offense is exemptible or non-exemptible.
- Whether the subject may remain in the facility or must be immediately removed.
- That the subject's criminal record exemption request was either approved or denied.

NON-EXEMPTIBLE CRIMES[1]

(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.

(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.
- CBCB is advised to consult legal if conviction is for a similarly titled state crime committed outside of California or a federal crime.
- Exemption may be granted to subjects convicted of Murder or Voluntary Manslaughter if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii) [2]. Note that this exception is only in section 1522 and only applies to those covered under section 1522.

---

[1] Juveniles and young adults sentenced to CYA may be released from such disabilities under Welfare & Inst. Code Sections 1179 and/or 1772. CBCB is advised to consult CBCB legal team if this issue arises.

[2] An exemption may be granted for the following violent felonies specified at Penal Code § 667.5(c)(1)Murder, Voluntary Manslaughter; (2) Mayhem; (7) any felony punishable by death or life in prison, and (8) any felony which inflicts great bodily injury) any felony in which the subject inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the subject uses a firearm which use has been charged and proved in Section 12022.5 or 12022.55, if the employee or prospective employee has been rehabilitated as provided in Penal Code Section 4852.03, has maintained the conduct required in Penal Code Section 4852.05 for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, **or** if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(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.
- CBCB is 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 207or 209 with intent to violate Penal Code § 261, 286, 288, 288a, or 289 is non-exemptible. [3]

(8) Penal Code Sections 211, 212, 212.5, 213, 214 — Any robbery

- Specified at Penal Code § 667.5(c)(9)
- Notwithstanding the above, if a subject has been convicted of second degree robbery and has obtained a certificate of rehabilitation, they are eligible for an exemption pursuant to a Court Order issued on June 22, 2006 in Glesmann v. Rita Saenz, Director of the Department of Social Services, et al. 140 Cal App.4th , page no. 960. This exception only applies to those seeking exemptions for facilities covered under Health & Safety Code Section 1522.

3. A conviction for the attempt to commit any crime specified at Penal Code § 290(c) is non-exemptible.

(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 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)

(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 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

(13) Penal Code Section 261(a)(1)(2)(3)(4) or (6) — Rape

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

(14) 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. CBCB is advised to consult CBCB legal team.

(15) 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

(16) 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.

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

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

(19) Penal Code Section 266i(b) — Pandering a minor

(20) Penal Code Section 266j — Providing a minor under 16 for lewd or lascivious act

(21) 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

(22) 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

(23) 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

(24) 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 1-1-65 is exemptible

(25) 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

(26) Penal Code Section 285 — Incest

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

(27) 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. CBCB is advised to consult CBCB legal team if conviction is on or before 1-1-76.

(28) 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

(29) 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. CBCB is advised consult CBCB legal team if the conviction is on or before 1-1-76.

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

- Specified in Penal Code § 290(c) by amendment effective 1-1-90

- Must be a felony conviction

- A conviction for the attempt to commit this crime is non-exemptible

- CBCB is advised to consult CBCB legal team if conviction before 1-1-90

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

- Specified in Penal Code § 290(c) by amendment effective 9-20-06
- A conviction for the attempt to commit this crime is non-exemptible

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

- Specified in Penal Code § 290(c) by initiative effective 11-7-06
- A conviction for the attempt to commit this crime is non-exemptible

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

- Specified in Penal Code § 290(c) by amendment effective 1-1-90 and at Penal Code § 667.5(c)(16) by amendment effective 1-1-92
- A conviction for the attempt to commit this crime is non-exemptible

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

- Specified in Penal Code, § 290(c) by amendment effective 9-20-06
- A conviction for the attempt to commit this crime is non-exemptible

(35) 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. CBCB is advised to consult legal if conviction is for Penal Code § 289.5

7-2100 NON-EXEMPTIBLE CRIMES (Continued) **7-2100**

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

- Specified at Health & Safety Code Sections 1522, 1568.09, 1569.17, and 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 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, CBCB is advised to consult 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 1-1-90

(37) 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 1-1-04
- A conviction for the attempt to commit this crime is non-exemptible

(38) 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

(39) 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

(40) 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

7-2100 NON-EXEMPTIBLE CRIMES (Continued) **7-2100**

(40) 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

(41) 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

(42) 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

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

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

(44) 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

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

- SB 1992, effective 1-1-2001, specifies Penal Code § 368 in its entirety.
- Formerly Penal Code § 368(a) or (b) if prior to 1-1-99, and (b) or (c) thereafter as specified at Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871

(46) 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

(47) 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)

(48) 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).

(49) 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)

(50) 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

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

- Specified in Penal Code § 290(c)
- CBCB is advised to consult CBCB legal team if conviction under 653f(c) is prior to January 1, 1980.
- A conviction for the attempt to commit this crime is non-exemptible

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

- Specified in Penal Code § 667.5(c)(12)
- CBCB is advised to consult CBCB legal team if conviction is from out of state for similar crime.

(53) Penal Code Section 667.5(c)(7)[4] — 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."
- Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii) if the underlying felony can be exempted.

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

- On or after 7-1-77, felony must have been charged and proved as provided for in Penal Code § 12022.7 or §12022.9. Prior to 7-1-77, 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
- Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii) if the underlying felony can be exempted

(55) Penal Code Sections 12308, 12309, 12310 — Exploding or igniting or attempting to explode or ignite any destructive device or explosive with the intent to commit murder

- All specified in Penal Code § 667.5(c)(13). Penal Code § 12309 and § 12310 added by Proposition 21 effective 3-8-2000

(56) 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

[4] If any Penal Code § 667.5(c) entry appears on rap sheet alone without any other Penal Code section violation then CBCB is advised to contact legal.

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

- Added by amendment effective 9-17-02, in Penal Code § 667.5(c)(23)

(58) 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

***

If the person is associated to a foster family home or a certified family home the Federal Non-exemptible Crimes (Evaluator Manual Section 7-2110) must also be considered. Current law prohibits granting a criminal record exemption to an individual associated to a foster or certified family home who has been convicted of a crime identified in Section 7-2110.

If the person is associated to a foster family home or a certified family home, the crimes listed under the Federal 5-year Ban List (Evaluator Manual Section 7-2115) must also be considered. Current law prohibits granting a criminal record exemption to an individual associated to a foster or certified family home who has been convicted of a federal 5-year ban crime (see Evaluator Manual Section 7-2115) within the past five years.

7-2110 FEDERAL NON-EXEMPTIBLE FOSTER AND CERTIFIED FAMILY HOMES 7-2110

This list addresses the state implementation of the federal Adam Walsh Child Protection and Safety Act of 2006. Assembly Bill 595 (Chapter 246, Statutes of 2009) amended state law to allow California to implement the federal requirements. The law applies to prospective foster parents and adults residing or providing care in foster homes that are not specifically exempted from the fingerprint requirements (see Health & Safety Code section 1522(b); Welfare & Institutions Code section 361.4).

The law now includes crimes for which an exemption may not be granted under the federal law. These crimes are in addition to the state's existing non-exemptible crimes (see Evaluator Manual Section 7-2100).

Health & Safety Code section 1522(g)(1)(C):

> "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 [Health and Safety Code 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)."

The reference to "crimes involving violence" means those violent crimes on the state's non-exemptible crimes list (see Evaluator Manual Section 7-2100).

Felony convictions for "child abuse or neglect:"

No additional crimes for this category as the state's existing non-exemptible crimes list covers these crimes.

Felony convictions for "spousal abuse:"

This list provides guidance as to which crimes are **likely** to be federal non-exemptible crimes.

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.

7-2110 FEDERAL NON-EXEMPTIBLE FOSTER AND CERTIFIED FAMILY HOMES (Continued) **7-2110**

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.

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)
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 in park)
HS section 11361(b) (Furnish Marijuana to minor in park)
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)
WI 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:"

AB 595 (Chapter 246, Statutes of 2009) defined these crimes to only include those violent offenses listed on the state's non-exempt crimes list. An exemption may not be granted for any crime on the state's non-exemptible crimes list.

7-2115 FEDERAL 5-YEAR BAN - FOSTER AND CERTIFIED FAMILY HOMES 7-2115

This list addresses the state implementation of the federal Adam Walsh Child Protection and Safety Act of 2006. Assembly Bill 595 (Chapter 246, Statutes of 2009), amended state law to allow California to implement the federal requirements. The law applies to prospective foster parents and adults residing or providing care in foster family homes that are not specifically exempted from the fingerprint requirements (see Health & Safety Code section 1522(b); Welfare & Institutions Code section 361.4).

The law now includes crimes for which an exemption may not be granted if the conviction occurred within the last five years. These crimes are in addition to the state's existing non-exemptible crimes (Evaluator Manual Section 7-2100) and the federal non-exemptible crimes (Evaluator Manual Section 7-2110).

Health & Safety Code section 1522(g)(1)(C):

> "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 [Health & Safety Code 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**."

Felony conviction, within the last five years, for "physical assault or battery:"

This list provides guidance as to which crimes are **likely** to be federal 5-year ban crimes.

PC section 69	(Obstruct / resist and executive officer by force or violence – also includes resisting by 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)

7-2115 FEDERAL 5-YEAR BAN - FOSTER AND CERTIFIED FAMILY HOMES (Continued) **7-2115**

Felony conviction, within the last five years, for "physical assault or battery:" (Continued)

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)
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-machinegun)
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-machinegun 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)

7-2115 FEDERAL 5-YEAR BAN - FOSTER AND CERTIFIED FAMILY HOMES (Continued) **7-2115**

Felony conviction, within the last five years, for "physical assault or battery:" (Continued)

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)
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 five years, for "drug and alcohol-related offense:"

This list provides guidance as to which crimes are **likely** to be federal 5-year ban crimes.

BP section 4060 (Cont. sub. without a prescription)
BP section 4324 (Forgery of prescription)
BP section 25603 (Bring liquor into prison)
Harbors & Navigation section 655(f) (Watercraft under the influence causing injury)
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)

7-2115 FEDERAL 5-YEAR BAN - FOSTER AND CERTIFIED FAMILY HOMES (Continued) **7-2115**

Felony conviction, within the last five years, for "drug and alcohol-related offense:" (Continued)

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)
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)

7-2115 FEDERAL 5-YEAR BAN - FOSTER AND CERTIFIED FAMILY HOMES (Continued) **7-2115**

Felony conviction, within the last five years, for "drug and alcohol-related offense:" (Continued)

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)
WI section 1001.5	(Alcohol at Youth Authority)

7-2125 ADDITIONAL ARRESTS REQUIRING INVESTIGATION 7-2125

In addition to arrests for crimes on the non-exemptible crimes list (Evaluator Manual Section 7-2100), arrests for the following crimes must be investigated.

Penal Code

245	Assault with a deadly weapon
273a(b), or prior to January 1, 1994, 273a(2)	Willful cruelty to a child
273.5	Willful infliction of corporal punishment on co-habitant resulting in a traumatic condition

7-2150 NONVIOLENT MISDEMEANORS / INFRACTIONS 7-2150

The following is a list of the most commonly seen nonviolent misdemeanors and infractions. The list is not all inconclusive.

Penal Code

118	Perjury
148	Obstruct Police Officer
166	Contempt/Disobey Court Order
330	Gambling
372	Public Nuisance
374	Littering
415	Fight/Noise/Offensive Words
460(b)	Second Degree Burglary
470	Forgery
476a	Insufficient Funds
484	Theft
487	Grand Theft
490.5	Shoplifting

7-2150 NONVIOLENT MISDEMEANORS / INFRACTIONS (Continued) **7-2150**

496	Receive/Possess Stolen Property
503	Embezzlement
530.5	Identity Theft
537(a)(2)	Defrauding Innkeeper
602	Trespassing
647	Disorderly Conduct (all)
647(e)	Loitering
647(f)	Public Intoxication
653m	Annoying Phone Calls
1203.2	Rearrest of probationer released on conditional sentence or summary probation. Means a person would have had a conviction, but if conviction does not appear on RAP, do not clear, forward to analyst to pursue conviction information.
1320(b), 1553 (VC 40508)	Failure to Appear
12031(a)(1)	Carry Loaded Firearm

Business & Professions Code

25658(a)	Sell Liquor to Minor

Federal Code – Title 8

USC 1182, 1227	Illegal Entry/Deportation

Vehicle Code

20	Providing False ID to Peace Officer
13553	Drive without a License
14601.5	Drive with a Suspended License
23152(a) and (b)	Driving Under the Influence
40508 (PC 1553)	Failure to Appear

7-2150 NONVIOLENT MISDEMEANORS / INFRACTIONS 7-2150
(Continued)

Health & Safety Code

11357	Possession of Marijuana
11364	Opium Pipes: Instruments for injecting or smoking controlled substances

Welfare & Institutions Code

14107	Fraud to Obtain Aid (Misdemeanor)

7-2200 FREQUENTLY USED ACRONYMS 7-2200

CACI	Child Abuse Central Index
CBCB	Caregiver Background Check Bureau
CCF	Community Care Facility
CCL	Community Care Licensing (same as CCLD)
CCLD	Community Care Licensing Division
CDSS	California Department of Social Services
CLETS	California Law Enforcement Telecommunications System
CORI	Criminal Offender Record Information
CRC	Criminal Record Clearance
DOJ	Department of Justice
FCCH	Family Child Care Home (previously Family Day Care)
FCCH	Family Child Care Home
FBI	Federal Bureau of Investigation
FFA	Foster Family Agency
H&SC	Health & Safety Code
IB	Investigations Branch (formerly known as RIS Regional Investigation Services and Program Investigation Unit)
JOC	Judgment of Conviction
LIS	Licensing Information System
LPA	Licensing Program Analyst
PC	Penal Code
RO	Regional Office of CCLD (formerly known as DO District Office)
TSO	Temporary Suspension Order