
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> ____ All Child Care Evaluator Manual Holders ____ All Residential Care Evaluator Manual Holders <u>X</u> All Evaluator Manual Holders	<u>Transmittal No.</u> 08RM-01
	<u>Date Issued</u> May 2008

Subject:**REFERENCE MATERIAL – BACKGROUND CHECK PROCEDURES**

Reason For Change:

To Revise:

- ◆ Simplified exemption review and approval procedures
- ◆ Central Administrative File procedures
- ◆ The Non-exemptible Crimes List

To Add:

- ◆ Out-of-State Child Abuse & Neglect Registry and FBI check procedures for Foster and Certified Family Homes to comply with the requirements of the Adam Walsh Child Protection and Safety Act of 2006
 - ◆ Separate county procedure sections
 - ◆ Procedures for reviewing Military Offenses
 - ◆ Additional information for reviewing Release/Detention Only dispositions
 - ◆ Procedures for rescinding an exemption
 - ◆ Numerous editorial changes for consistency and clarity
-

Filing Instructions:X REMOVE – The entire Background Check Procedures sectionX INSERT – This package

Approved:*Linda Patterson**5/27/08*

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Date

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REFERENCE MATERIAL

FOR

**BACKGROUND CHECK
PROCEDURES**

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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 Policy and Procedures contained in 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 apparent 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 Memorandum 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:

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

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

Foster Family Homes

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

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

Send an additional copy to your local liaison.

Family Child Care Homes

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

The LIC 9210 must include:

- The name of the county.
 - The facility type, either Family Child Care Home or Foster Family Home.
 - The county liaison's name who is assigned to your county.
 - The county liaison's phone number.
 - The year of the report.
 - The appropriate reporting period.
 - The subject's name as it appears on the Department of Justice criminal record. It is not necessary to list all of the aliases as reflected on the rap sheet.
 - The facility name and number listed on the license.
 - The subject's social security number.
 - The subject date of birth.
 - The appropriate reporting source: Department of Justice (DOJ), Federal Bureau of Investigation (FBI), self reported on LIC 508 (self), or transferred from another licensing agency (Transfer).
 - Type of exemption. Use the following legend: Standard (ST), Simplified (SM), Conditional (C), 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 PD reports, convictions which were pleaded down or dismissed, and if the case was discussed at a legal consultation with your county liaison and staff attorney. Did a minor, nonserious conviction stem from an arrest for a violent crime? If so, was a crime report reviewed? Please indicate if the crime(s) upon which the exemption was determined, considered this "potential for violence" factor in the exemption decision.
- NOTE:** a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offence, presents a 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 % which ever 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**

A subject is deemed to have a criminal record clearance if he/she has no felony or misdemeanor convictions reported by the California Department of Justice and the FBI. However, the subject may have been arrested with no criminal conviction, convicted of a minor traffic offense or adjudicated as a juvenile.

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

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

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

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

Health & Safety Code Section 1522(b) requires individuals, other than clients, who reside in a facility to be fingerprinted. An 18-year-old foster child who is still receiving foster care benefits does not have to be fingerprinted because he or she is still considered a client. If the 18-year-old no longer receives foster care benefits, he or she must be fingerprinted and obtain a criminal record clearance or exemption.

If the Foster Family Home or Certified Family Home is also licensed as a Family Child Care Home, anyone 18 years or older residing in the home must be fingerprinted regardless of whether he/she is a foster child and is or is not receiving foster care benefits. Health & Safety Code Section 1596.871(b) requires individuals other than children who reside in the home to be fingerprinted.

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

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

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

For Fiscal Years 2007-08 these categories must pay the FBI processing fee.

7-1100 CRIMINAL RECORD CLEARANCE (Continued)**7-1100****Transferring a Clearance****Between State Licensed Facilities Or TrustLine Registry:**

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

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

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

All clearance transfer requests must be submitted to the Department before the subject, 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.*

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

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

Active criminal record clearances may be transferred between contracting county licensing agencies and between contracting county licensing agencies and state licensing agencies provided:

1. The transfer is within the same licensing category, i.e. FCCH to FCCH and FFH to FFH. 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** (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 transfers the authority to receive subsequent criminal record information (specifics below).

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

The following transfers are NOT allowed;

- Between an FFH and homes utilized by another county for placement of a relative child.
- Between persons on the TrustLine Registry and county licensed FCCH or FFH.

Process For Requesting And Completing A Transfer

If a FCCH, FFH 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 receiving licensing agency must contact the licensing office that originally 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 EM Section 7-1770 for exemption transfers). If the background check is eligible for a transfer and the subject has a criminal record clearance, the following procedures must be followed:

- Give the subject a copy of the BCII 9002, Substitute Agency Notification Request. Copies of the form are available on the DSS Community Care Licensing Division website at <http://www.dss.cahwnet.gov/cdssweb/PG164.htm#b>.
- The subject must:
 - Complete Step I of the form (applicant information).
 - Contact the previous licensing agency to obtain information to complete Step II.
 - Return the form to the receiving licensing agency with Step I and Step II completed.
- When the subject returns the form with Step I and II completed, the receiving licensing agency must complete Step III and forward the form to the Department of Justice.
- When the Department of Justice has approved the transfer, they will cease processing subsequent arrest notifications for the original licensing agency and send a copy of the form back to the receiving licensing agency indicating that the transfer has been completed.
- When the approved form is received from the Department of Justice, the receiving licensing agency must send a copy of the approved transfer form to the original licensing agency. Licensing agencies receiving notice of a Department of Justice approved transfer to another licensing agency do not need submit a No Longer Interested form to the Department of Justice.

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

The receiving licensing agency must also review the date of the original Child Abuse Central Index (CACI) check. If the original inquiry was made prior to January 1, 1999, the subject must submit a new CACI request as part of the transfer process. The licensing agency requesting the transfer must ensure that the applicant submits an LIC 198 (and a \$15 processing fee) along with 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.

Employment or residency cannot begin until the Department of Justice has approved the transfer.

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 CLEARANCES ONLY. See Evaluator Manual Section 7-1770 for exemption transfer procedures.

Chain Facilities – Central Administrative File:

A licensee with multiple licensed facilities may request a waiver to be allowed to designate one facility file, within a regional office, as the central administrative file for criminal record association purposes. The request must be in writing and the licensee must agree to:

- Submit an updated LIC 500 quarterly for each facility.
- Designate a staff person in the facility whose file is selected as the central administrative file 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 file 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 file.

If a licensee of multiple facilities does not have an approved waiver to associate all employees to one designated administrative file, and an employee is found to be working in a facility he/she is not associated to, cite the licensee and assess civil penalties. Give the facility administrator a transfer request form (LIC 9182) and have him/her complete the form 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 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. 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, the Regional Office must immediately forward a copy of the LIC 508 and any attached explanation or documentation to the Caregiver Background Check Bureau.

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 Section 7-1820). 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.

7-1200 NAME SEARCH**7-1200**

A name search is an alternate type of criminal history inquiry that is only conducted for individuals who have a medical problem and/or a disability that prevents them from providing clear fingerprints either manually or electronically.

The Department of Justice will 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.

The Department of Justice will send the contributing 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 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.

PROCEDURE

To request a name search an authorized applicant 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 (California/Federal),
- method of payment (fees attached or to be billed),
- an explanation why the subject cannot submit fingerprints,
- a statement that the authorized applicant agency certifies, under penalty of perjury, that the applicant's condition was verified, and
- a statement that the authorized applicant agency understands that the DOJ 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

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. If a facility is licensed based upon the 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 & 1811, Arrests-Subsequent to a clearance or an 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 & 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 FBI rap sheet containing convictions, the licensing agency must process the exemption request as outlined in Evaluator Manual Sections 7-1820 & 1821, Convictions Subsequent to Clearance or Exemption.

Effective January 1, 2008 all prospective foster parents must have a completed FBI criminal history check prior to licensure. The CBCB will notify the Regional Office of the completed FBI criminal history check.

If the FBI rap sheet contains a charge that the applicant disputes, there is a central FBI 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.

Children's residential facilities with a capacity of six or less and all family child care homes are exempt from the Federal Bureau of Investigation processing fee except during Fiscal Years 2003 – 2004 and 2004 - 2005.

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. Subjects required to submit fingerprints for the purpose of a criminal background check for child care must also submit a Child Abuse Central Index form (LIC-198A for Community Care Licensing Division licensed facilities or LIC-198 for County licensed facilities) and the appropriate fee to the Department of Justice. The licensing agency may issue a criminal record exemption, prior to receipt of the Child Abuse Central Index clearance.

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.

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 application is denied or the registration is revoked.

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.

7-1410 STATE LICENSING: CHILD ABUSE CENTRAL INDEX (Continued) 7-1410

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 Bureau 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.

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.

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

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 report information. The subject must be notified prior to the final investigative findings of the licensing agency. The subject is responsible for contacting the child protection agency to obtain a copy of the report. 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 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
- Weight
- Race
- Hair color
- 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.

A completed FBI criminal history check is required **prior** to licensure for applications received on or after January 1, 2008.

For all license applications received after January 1, 2008, the Licensing Agency must ask 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://cclld.ca.gov> under the heading “Adam Walsh Act.”

Requests from other state’s child welfare agencies checking for a match on the CA CACI 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).

7-1460 STATE LICENSING: ADAM WALSH 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://cclld.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, Adam Walsh 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 Adam Walsh (AW) 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 AW Database. If the individual is associated with an FFA, send an acknowledgement letter (AW 1) to the FFA.

7-1460 STATE LICENSING: ADAM WALSH (continued)**7-1460**

NOTE: In addition to the CBC System, use the Adam Walsh (AW) Database throughout the background check process. The Adam Walsh 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 AW Database. If the individual or the FFA does not respond or does not send the required document requested, close the case, and send the AW 9 to the FFA.

Send the LIC 198B and all related documents to the state(s) identified with the AW 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.

If a response is not received within 14 calendar days, send the request again with a "Second Request" stamp. Verify that correct fax numbers/mailling 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 AW Database and generate a clearance letter (AW 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 (AW 7) that further evaluation is required. The AW 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 AW 7 indicating that they do not want the investigation to continue, update the CBC System and the AW Database. Notify the FFA and RO by letter (AW 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 AW 7, request the child abuse investigative report from the agency that conducted the original child abuse investigation. Send the AW 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.

7-1460 STATE LICENSING: ADAM WALSH (Continued)**7-1460**

If clearance is granted, send a clearance letter (AW 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 Adam Walsh investigator. Attach all information received to a transmittal form (AW IB). After a full investigation has been conducted, IB will return the report to the Adam Walsh Unit with a completed Transmittal Form.

Review the investigation report and complete a case summary. Update the CBC System and the AW Database. If a clearance is granted, mail a clearance letter (AW 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 (AW 5.0) to the RO regarding the conduct action. Update the CBC System and the AW Database indicating that the individual was “Not Cleared Following Inquiry.”

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: ADAM WALSH**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 AW 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

7-1470 COUNTY LICENSING: ADAM WALSH (Continued)**7-1470**

Upon receipt of a response from the other state's registry indicating No Match, send a clearance letter (AW 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 (AW 7) that further investigation is required. The AW7 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 AW7 indicating that they do not want the investigation to continue, deny the individual's license application.

If the individual does not respond to the AW7, request the investigative report from the agency that conducted the original child abuse investigation. Send the AW Cover 2 with a copy of the other state's registry response. Follow instructions above for unresponsive agencies. Follow your counties procedures for processing requests for fees. Upon receipt of the investigative report from the reporting agency, conduct an investigation consistent with EM 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 (AW 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 (AW 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.

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

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.

For initial inquiries, the rap sheet may contain:

- All convictions and their related arrests
- 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
- Arrest information of all crimes (See Evaluator Manual Section 7-1810.).
- 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.

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 7-2100, Confidentiality of Criminal History Information.

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

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 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 EM Section 7-1535 for initial arrest only processing procedures and Section 7-1810 for subsequent arrest only processing procedures. For county licensing see EM 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.

Military Offenses

Military discipline may or may not require a criminal record exemption. To be viewed as a “criminal conviction,” the elements of the military offense must first match the elements of a state criminal offense. Discipline for certain military conduct such as desertion or disobeying an order is distinct from state criminal offenses 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; meaning a judge or jury, appointed counsel, the right to call and question witnesses, etc.

State level due process is not provided for discipline classified as non-judicial (Art. 15), “field grade,” or summary courts-martial (Art. 20). The discipline in these cases is imposed by a higher level commander after he/she alone hears the evidence. In contrast, general courts-martial and special courts-martial proceedings do provide the same level of due process afforded in state criminal court. General courts-martials adjudicate felony type offenses while special courts-martials adjudicate misdemeanor type offenses.

Thus, an individual adjudicated by general or special courts-martial for an offense that is also a state criminal offense will need an exemption. Absent this criteria, consider a conduct inimical investigation. Note there are always exceptions. For example, a trial by courts-martial may be requested in place of non-judicial punishment or vice-versa. When in doubt about the offense or the level of due process afforded, consult with Legal.

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

A subject with a non-exemptible conviction(s) is not eligible to request 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 a non-exemptible conviction, 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).

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.

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

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

If a potential employee has a non-exemptible conviction, 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, reside or 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 a conviction for a non-exemptible crime, the Caregiver Background Check Bureau will send a notice (TL-11) to the subject informing them that they may not provide care.

Use the list in Evaluator Manual Section 7-2100 to determine if the subject's offense is considered non-exemptible. If the offense does not appear on the non-exemptible list, the subject has the right to apply for an exemption. See Evaluator Manual Section 7-1710 Exemption Requests.

Special attention must be given to a conviction of indecent exposure (Penal Code Section 314.1). Specified at Penal Code § 290(a)(2)(A). This crime is always non-exemptible unless the court expressly orders that the person does **not** have to register as a sex offender. Before allowing a subject convicted of indecent exposure to be eligible for an exemption, the licensing agency must verify with the court that it issued an order that the he or she did **not** have to register as a sex offender.

7-1515 CERTIFICATE OF REHABILITATION – H & S 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:
 - (i) Murder or voluntary Manslaughter;
 - (ii) Mayhem;
 - (iii) Any felony punishable by death or life in prison; or

7-1515 CERTIFICATE OF REHABILITATION – H & S Code 1522 (Continued) 7-1515

- (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.

Additionally, if a subject that 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 to request 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 file 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 7-1720 through 7-1737 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****Licensed and TrustLine Cases - Initial Inquiries**

Upon receipt of a rap sheet with arrest-only information (no convictions) the Caregiver Background Check Bureau will review the rap sheet and determine the crime type of each arrest.

Arrests may be referred for investigation if the arrest is for a crime on the Non Exemptible or Exemptible Felony/Violent Misdemeanor crimes list (Evaluator Manual Section 7-2100 or 7-2125) or if the Caregiver Background Check Bureau believes that an investigation is warranted.

Arrests resulting in the following dispositions are **NOT** to be investigated, regardless of crime type. Arrests resulting in these dispositions **shall** be cleared.

☒ 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, record. 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

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

(Continued)

If the subject is a prospective employee of the facility, contact the licensee to determine if he/she is still interested in employing the subject. If the licensee does not, close "Agency Initiated".

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

Non-Exemptible

Arrests for all crimes on the Non-Exemptible crimes list, see Evaluator Manual Section 7-2100 (except those resulting in the dispositions noted above) must be referred for investigation. This includes arrests that have resulted in the following dispositions:

- ☒ Complainant Refused Prosecution
- ☒ Bail Exonerated
- ☒ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☒ Acquitted or Not Guilty

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1, and 6.0 or TL-11 letters.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540

► NO CONVICTION:

If the subject is the license applicant, update CBC and send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a TrustLine applicant, send the AO 2. If no response in 30 days, close.

If the subject is a potential employee, spouse, or dependent family member, update CBC and send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close. If the case has already been sent to investigations, recall.

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

(Continued)

If an investigation is warranted:

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

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. 19-62) with one of the following checked:

- A. ☐ Unable to Substantiate- Send directly to CBCB
- B. ☐ Applicant/voluntary closure - Send directly to CBCB
- 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 Conduct Inimical Procedures**

Exemptible Felony/Violent Misdemeanor

Arrests **OVER 5 YEARS OLD WITH A DISPOSITION** other than a conviction may be issued a DSS Clearance without an investigation if the rap does not reflect a pattern of violent multiple arrests and there is no pending Administrative Action.

► IF CLEAR, update CBC, send DSS clearance letter.

Arrests LESS THAN 5 YEARS & OVER 5 YEARS WITHOUT A DISPOSITION:

Arrests for crimes on the Exemptible Felony/Violent Misdemeanor crimes list (see Evaluator Manual Section 7-2125) may be referred for investigation. This includes arrests that have resulted in the following dispositions:

- ☒ Complainant Refused Prosecution
- ☒ Bail Exonerated
- ☒ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☒ Acquitted or Not Guilty

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

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

(Continued)

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1, and 6.0 or TL-11 letters.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540

► NO CONVICTION:

If the subject is the license applicant, update CBC and send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a TrustLine applicant, send the AO 2. If no response in 30 days, close.

If the subject is a potential employee, spouse, or dependent family member, update CBC and send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close.

If an investigation is warranted:

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

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. 19-62) with one of the following checked:

- A. ☐ Unable to Substantiate- Send directly to CBCB
- B. ☐ Applicant/voluntary closure - Send directly to CBCB
- 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 **conduct inimical procedures below**

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

7-1535

(Continued)

Substantiated Conduct Inimical Procedures:

1. Review case

2. Prepare a Clearance or a Case Analysis Worksheet with a recommendation for a DSS clearance, non-immediate exclusion, immediate exclusion, TrustLine denial or TrustLine revocation.

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 consulting attorney for additional information or advice on recommendation.

- If the manager agrees with recommendation, case will be returned to the analyst for processing.
- If the manager does not agree with recommendation, case may be discussed with the analyst or Bureau Chief or may be submitted to Consulting Attorney for assessment. The Consulting Attorney may review the case in person, by email or by phone.

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

NOTE: The Consulting Attorney will make recommendations but will not make the decision on which action CBCB should take. The Consulting Attorney may offer an opinion as to whether or not we have sufficient evidence that would allow us to prevail at an administrative hearing.

- If manager and analyst do not agree on a case decision, forward to the Bureau Chief.

The Bureau Chief will review case and render final recommendation on case.

4. Document all discussions and issues for the case file.

5. Make appropriate entry in database and, if applicable process a Statement of Facts (SOF)

Immediate Exclusions - complete and obtain signatures for a SOF form and an immediate exclusion letter. Send letter to Investigations. Investigations will serve the letter on the subject and send a copy to the licensee. The background check analyst must fax a copy to the Regional Office. The subject has 15 days to appeal. If the subject appeals, forward to legal. If the subject does not appeal, consider "For The Record" action. See EM Section 1-1417.

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

Non-immediate Exclusions - complete a SOF form, obtain required signatures and forward to legal. Legal will prepare an accusation to notify the subject of the action and the due date for the Notice of Defense. If the subject has a previous exemption, prepare an "A" case which excludes the subject, or a "B" case which rescinds the exemption.

Nonviolent Misdemeanor / Infractions (see Evaluator Manual Section 7-2150)

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

► **CONVICTION** - If the subject was convicted of the crime for which he/she was arrested or for any crime on this list:

- Process the Exemption

► **DIVERSION:** See Evaluator Manual Section 7-1540

► **NO CONVICTION:**

- Update CBC
- Send DSS Clearance letter

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

Upon receipt of a rap sheet with arrest-only information (no convictions) the County Licensing Agency will review the rap sheet and determine the crime type of each arrest.

Arrests may be investigated if the arrest is for a crime on the Non-Exemptible or Exemptible Felony/Violent Misdemeanor crimes list (Evaluator Manual Section 7-2100 or 7-2125) or if County Licensing Agency believes that an investigation is warranted.

Arrests resulting in the following dispositions are **NOT** to be investigated, regardless of crime type. Arrests resulting in these dispositions shall be cleared.

☒ 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, record. 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

If the subject is a prospective employee of the facility, contact the licensee to determine if he/she is still interested in employing the subject. If the licensee is not, close.

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 or is still residing in the home.

Non-Exemptible

Arrests for all crimes on the Non-Exemptible crimes list, see Evaluator Manual Section 7-2100, (except those resulting in the dispositions noted above) must be investigated. This includes arrests that have resulted in the following dispositions:

☒ Complainant Refused Prosecution

☒ Bail Exonerated

☒ All Juvenile arrest only entries including those where minor was released to parent or guardian

☒ Acquitted or Not Guilty

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

Check available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1 and 6.0.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540

► NO CONVICTION:

If the subject is the license applicant, send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a potential employee, spouse, or dependent family member, send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close.

See Evaluator Manual Section 7-1000 for letter modification instructions.

If an investigation is warranted:

- 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.
- Obtain a copy of the subject's DMV record.
- 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 and telephone calls.
- 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 for possible Administrative Action as **conduct inimical**.

7-1536 COUNTY LICENSING: ARREST ONLY– INITIAL INQUIRY
(Continued)**7-1536****Exemptible Felony/Violent Misdemeanor**

Arrests **OVER 5 YEARS OLD WITH A DISPOSITION** other than a conviction may be issued a clearance without an investigation if the rap sheet does not reflect a pattern of violent multiple arrests and there is no pending Administrative Action.

- IF CLEAR, send clearance letter (cbcb1).

Arrests LESS THAN 5 YEARS & OVER 5 YEARS WITHOUT A DISPOSITION:

Arrests for crimes on the Exemptible Felony/Violent Misdemeanor crimes list (see Evaluator Manual Section 7-2125) may be referred for investigation.

Check available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1, and 6.0 letters.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540**► NO CONVICTION:**

If the subject is the license applicant, send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a potential employee, spouse, or dependent family member, send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close. See Evaluator Manual Section 7-1000 for letter modification instructions.

If an investigation is warranted:

- 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.
- Obtain a copy of the subject's DMV record.
- 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.

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

- Document the results of your investigation. Keep notes of all contacts and telephone calls.
- 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 for possible Administrative Action as **conduct inimical**.

Substantiated Conduct Inimical Procedures:

1. Prepare a Clearance or a Case Analysis Worksheet with a recommendation for a DSS clearance, non-immediate exclusion or immediate exclusion.
2. Forward to your manager for review. The manager will review all case analysis documents and may discuss with the analyst, or consulting attorney for additional information or advice on recommendation.
3. Document all discussions and issues for the case file.
4. If applicable process a Statement of Facts (SOF)

Immediate Exclusions - complete and obtain signatures on the SOF form and an immediate exclusion letter. Serve the letter on the subject and send a copy to the licensee. The subject has 15 days to appeal. If the subject appeals, forward to legal. If the subject does not appeal, consider “For The Record” action. See EM Section 1-1417.

Non-immediate Exclusions - complete a SOF form, obtain required signatures and forward to legal.

Nonviolent Misdemeanor / Infractions (see Evaluator Manual Section 7-2150)

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1, and 6.0 letters.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540**► NO CONVICTION:**

- Update file
- Send DSS Clearance letter

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 prosecution and civil disabilities by participating in a work program, educational program, or rehabilitative counseling. Depending on the program type, the individual's progress in the program, and the civil disability protection obtained, each individual case could result in a conviction, an arrest-only investigation, or a clearance.

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.

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 your legal consultant if necessary.

Arrest Only Investigation Note: Arrests may be referred for investigation if the arrest is for a crime on the non-exemptible crimes list (EM Section 7-2100) or the exemptible felonies/violent misdemeanor crime list (EM Section 7-2125), or if the Caregiver Background Check Bureau believes that an investigation is warranted. Process all arrest-only investigations in accordance with EM Sections 7-1535 and 7-1810 for state licensing and Sections 7-1536 and 7-1811 for county licensing.

PROCEDURE:

Upon receipt of a rap sheet with diversion information, identify the specific diversion program and the individual's progress in that program. The diversion programs and additional procedures are detailed below:

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.

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

2. If still unable to identify the diversion program and individual's progress, send written notification (Manual Letter) to the individual requesting identification of the criminal charge, the diversion program, the progress made in the program, and the expected completion date. Supporting records should also be requested.
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 D.A. diversion, county diversion or deferred prosecution. Determine 1) whether or not you are dealing with an informal diversion program, 2) whether or not a conviction exists, and/or 3) whether an arrest-only investigation is appropriate. Contact legal if necessary.

After Identifying the Diversion Program, Process as Follows:

PENAL CODE §1000 – 1000.8 DIVERSION PROGRAM

This program is an 18 month to 3 year diversion program for DRUG OFFENDERS. It may also be called Deferred Entry of Judgment (DEJ). 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.

- A. Process as a conviction if the person fails the program and is convicted.
- B. Process as an arrest-only investigation at any time prior to successful completion. After successful completion, the investigation may continue as detailed in C.
- 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.
- 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 inimical.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued)**7-1540**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 conviction if the person failed the program and was convicted.
- B. 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 (CACI) hits.
- C. Process as a clearance if the person successfully completed the diversion program, the criminal charge was dismissed, and there is no or insufficient independent evidence to prove conduct inimical.

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 conviction if the person fails the program and is convicted.
- B. 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.
- C. Process as a clearance if there is no conviction, and the case is inappropriate for an arrest-only investigation or there is insufficient evidence to prove the conduct.

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 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 conviction if the person fails the program and is convicted.
- B. Process as an arrest-only investigation at any time prior to successful completion. After successful completion, the investigation may continue as detailed in C.
- 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.
- 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.

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 conviction if the person fails the program and is convicted.
- B. Process as an arrest-only investigation at any time prior to successful completion. After successful completion, the investigation may continue as detailed in C.
- 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.
- 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.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued)**7-1540****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 conviction if the person fails the program and is convicted.
- B. Process as a clearance if the person successfully completes the program and has the charges dismissed.
- C. Process as a clearance if the case is inappropriate for an arrest-only investigation. These charges are generally not processed as arrest-only investigations – see arrest-only investigation note, above, and sections 7-1535 and **7-1810**.

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 conviction if the person fails the program and is convicted.
- B. Process as an arrest-only investigation at any time prior to successful completion. After successful completion, the investigation may continue as detailed in C.
- 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 (CACI) 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.

7-1540 DIVERSION/DEFERRED ENTRY OF JUDGMENT (Continued)**7-1540**PENAL CODE §1210 and 1210.1 TREATMENT PROGRAM (PROP 36)

This treatment program for NONVIOLENT DRUG OFFENDERS is offered as a condition of probation – meaning the person stands convicted until dismissed upon successful completion. Upon successful completion, the conviction is dismissed, the arrest is deemed never to have occurred, and the record of arrest can no longer be used to deny 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.
- B. Process as a clearance after successful completion and dismissal of the conviction unless and investigation into the conduct has been initiated as detailed in C.
- C. 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 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.

**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, call the Legal Division.

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 CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
CLEARANCE****7-1600**

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

If a subject has been convicted of a minor infraction or a citation, or has been arrested for a crime listed in Evaluator Manual 7-2150 and has not been granted an exemption, the subject may be granted a California Department of Social Services or county licensing agency clearance. Notification of a California Department of Social Services Clearance is sent to the licensee only. For licensed facilities, send the CBCB1. For TrustLine, use TL38. County licensing agencies see Evaluator Manual Section 7-1000 for modification instructions.

- If a subsequent conviction is received for a subject who had previously been granted a California Department of Social Services or county licensing agency clearance, the conviction should be reviewed for an exemption according to existing procedures. An action to deny an exemption for a subsequent conviction will result in a reversal of the California Department of Social Services or county licensing agency clearance.

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) 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 Requests 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 Exemptions Transfers).

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 cbc2.1, 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 cbc3, 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 (cbc2.1C, 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, require use of 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 **(any exceptions to this limit must be documented and approved by a Unit Manager, or County equivalent);**
- (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 or, if the probation was informal or unsupervised it has been at least five years since the date of conviction. **(Any exceptions to this criterion 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	Providing False ID to Peace Officer
Drive with Suspended License	Gambling
Possession of Stolen Vehicle	Littering
Drive without License	Public Intoxication
Petty Theft	Illegal Entry / Deportation
Fraud to Obtain Aid (misdemeanor)	Public Nuisance
Receive Stolen Property	Possession of Open Container in Vehicle
Defrauding Innkeeper	Carry Loaded Firearm
Perjury	Insufficient Funds
Contempt / Disobey Court Order	Unlawful Assembly / Picketing
Shoplifting	

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 | ✓Loitering |
| ✓Trespassing | ✓Obstruct Public Officer |
| ✓Vandalism | ✓Fighting in Public Place |
| ✓Annoying Phone Calls | ✓Prostitution |
| ✓Possession of a Controlled Substance | |

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 not be used in the following situations:

- If there is any conviction within the preceding five years. (If a violation involved Juvenile Court conviction while the person was under the age of 18 years, it cannot be used as a basis to deny an application or prohibit employment.)
- 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 EM 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. See EM Section 7-1520.
- The rap sheet indicates that the subject was initially charged with a felony, or a crime listed in Evaluator Manual 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 Requests).

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, court issued Judgment of Conviction 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. In all cases, the rationale for the decision must be thoroughly documented in writing in the exemption case file.

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

7-1731 EVALUATION OF STANDARD EXEMPTION (Continued)**7-1731****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 given. If it is for confinement in state prison, the subject was convicted of a felony. 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. It is possible that a subject could have been charged initially with a serious felony offense, but he/she could have been subsequently convicted of a lesser crime.

For example, a subject may have been initially charged with attempted murder and subsequently pled guilty and was convicted of an assault charge. 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 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 charges that was made.

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 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 dependent 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 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.

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 identity of the victim (whether it was a dependent individual):

A violent crime conviction is to be considered to be particularly serious if the victim was either a dependent individual (child, disabled, elderly), or would be considered to be less able to defend themselves (adult male/female). Depending on the severity of the level of violence, a violent act involving a dependent 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:

If the subject has more than one violent crime conviction, or there is other indication of violent behavior (arrests, licensing complaints) the maximum number of additional years should be applied. With repeated acts of violence, time periods in excess of fifteen years 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 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: Though some of these crimes appear on the list of crimes that may qualify for a simplified exemption (EM Section 7-1720), crimes discussed here do not meet the criteria for a simplified exemption, i.e. may have been plead down, conviction is less than 5 years old, 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 will 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.

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

- When a crime report or court document is obtained, the decision will often depend on the 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 similar pattern of 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 (if the crime was a violent misdemeanor, a minimum of 15 years) 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 7-1741 Exemption Decision Guidelines).
- 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 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 dependent individual - the type of individual cared for in a community care facility such as a child, an elderly person or a developmentally disabled person?
- Determine the status of outstanding warrants on a rap sheet. If the rap sheet contains an arrest without a disposition, follow procedures outlined in EM Section 7-1535 for initial rap sheets and EM 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 support 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, Alcoholics Anonymous, Narcotics Anonymous, etc.? Was counseling or therapy court ordered or voluntary?
- Has the subject pursued education or performed community 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(s) specified on 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 include all convictions, an exemption for the remaining convictions is still required.

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

- Does the subject possess a Certificate of Rehabilitation? Please see Evaluator Manual Section 7-1550.
- 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 recent 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 not 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.

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. 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, if the subject provides evidence of rehabilitation, but the required time since conviction or end of probation has not lapsed, a Conditional Exemption for the subject to work in that specific facility only may be considered.

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.

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

CBCB conditional exemption letters are the cbc4.01, cbc4.11, and cbc21.1. 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).

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 7-1820 - Subsequent Convictions.

7-1735 DECISION CRITERIA

7-1735

Licensing regulations outline minimum timeframes, following 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 regulations require the licensing agency to review whether the subject was placed on supervised or unsupervised probation to determine the number of years that must lapse. If the subject was placed on supervised probation (usually indicated by the subject being placed under the direct supervision of a probation officer and subject to periodic checks), 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, 1 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, 4 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 (1) or more violent misdemeanors and 15 years have lapsed since incarceration or completion of supervised probation. If unsupervised probation, 15 years since the date of the last violent misdemeanor conviction.**

All exemptions must be approved by the Branch Chief (or 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 the full criminal history as required by EM Section 7-1731 through 7-1733.

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

** If the subject has a combination of convictions that include both a nonviolent felony and nonviolent misdemeanor(s), consider the full criminal history as required by EM Section 7-1731 through 7-1733. In addition, determine if the misdemeanor(s) conviction and the felony conviction are similar crimes. In cases where there is a combination of crimes including a nonviolent felony and nonviolent misdemeanor(s), use the standard for 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 EM 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 Decision). 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. Please see Evaluator Manual, Background Check Procedures, Section 7-1760, and 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 Or TrustLine Registry**

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

Upon receipt of the LIC 9188, the Regional Office or the TrustLine Registry must forward the form to the Caregiver Background Check Bureau.

An exemption can be automatically transferred if:

- The subject has not engaged in any criminal activity since the exemption was granted.
- There is no investigation in process by the Background Investigations Review Section.
- There have been no administrative actions taken against the subject since the exemption was granted. CCLD check the LIS - Personnel History Report. County licensing check the County Licensing Administrative Action Personnel Flagging website. You may obtain the complete web address from your county liaison.

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

Review the previous exemption case file (if available) to determine whether the subject had prior convictions that are now non-exemptible.

If the subject has convictions that are now non-exemptible, deny the transfer request (cbcb5.3) and rescind the previous exemption (cbcb23). If the transfer request is for an employee, the subject must be excluded from all facilities to which they are associated. If the transfer request is for a licensee, inform the Regional Office by phone and letter (cbcb5.0). Follow instructions in Evaluator Manual Section 7-1740-B.

If the subject has arrests for any crimes listed in EM Section 7-2100 and 7-2125, review case to find the status of the arrest investigation.

- If an investigation was completed, and the subject was cleared continue processing the transfer request.
- If the arrest investigation is in progress do not approve. No action can be taken until the investigation has concluded.
- If the arrest has not been referred for investigation— refer case now.

If the previous file is unavailable, request a new rap sheet from Department of Justice. If Department of Justice does not provide a new rap sheet, approve the transfer without the previous file information.

If the prior exemption is conditional, determine if the conditions placed on the exemption preclude transfer of the exemption to another facility or TrustLine. If no file is available, and the conditional exemption was granted by the Legal Division, contact them to obtain copies of any stipulations and decision and orders. If no file is available, and the conditional exemption was granted by Caregiver Background Check Bureau, request a copy of the exemption approval letter from the subject. If the subject cannot provide a copy of the approval letter, process the exemption transfer as a new exemption.

When considering an exemption transfer to another facility that provides services to children (child care or residential) or TrustLine, the licensing agency must also review the date of the last Child Abuse Central Index check. If the last inquiry was made prior to January 1, 1999, a new inquiry must be submitted. The Licensing Information System does not contain information on any reports filed since the initial inquiry (See Evaluator Manual Section 7-1400, Child Abuse Central Index check).

An exemption granted for a subject who has a certificate of rehabilitation, as specified in Evaluator Manual Section 7-1515, can only be transferred to other facility types governed by Health & Safety Code Section 1522. This means the exemption cannot be transferred to an RCFE, RCF-CI, 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. See Evaluator Manual Section 7-1515.

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

7-1770 EXEMPTION TRANSFER (Continued)**7-1770****Between County Licensed Agencies Or Between State And County Licensed Agencies – Family Child Care Homes (FCCH) and Foster Family Homes (FFH) Only**

Criminal record exemptions may be transferred between contracting county licensing agencies and between contracting counties and state licensing agencies provided:

1. The transfer is within the same licensing category, i.e. FCCH to FCCH and FFH to FFH (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 DOJ, that is, the original licensing agency is still authorized to receive subsequent history information from DOJ and has not made the applicant inactive by returning a ‘no longer interested’ form to Department of Justice;

AND

3. DOJ has approved the transfer (see below for specifics).

The following transfers are NOT allowed;

- Between an FFH and homes utilized by another county for placement of a relative child.
- Between persons on the TrustLine Registry and county licensed FCCH or FFH.

Process For Requesting And Completing A Transfer

If an FCCH, FFH 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 receiving licensing agency must contact the licensing office that originally 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 EM Section 7-1110 for clearance transfers). If the background check is eligible for a transfer and the subject has a criminal record exemption, the following procedures must be followed:

- Give the subject a copy of the BCII 9002, Substitute Agency Notification Request. Copies of the form are available on the DSS Community Care Licensing Division website at <http://www.dss.cahwnet.gov/cdssweb/PG164.htm#b>.

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

- The subject must:
 - Complete Step I of the form (applicant information).
 - Contact the previous licensing agency to obtain information to complete Step II.
 - Return the form to the receiving licensing agency with Step I and Step II completed.
- If the subject has a criminal record exemption, the receiving licensing agency must request the exemption case file from the original licensing agency that granted the exemption. Specify that the file must contain the original 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 receiving agency.
- Review the file (if available) to determine whether the subject had prior convictions that are non-exemptible. If the subject has convictions that are non-exemptible, deny the transfer request (cbcb5.3). If the transfer request is for a licensee applicant, inform the Regional Office by phone and letter (cbcb5.0). Follow instructions in Evaluator Manual Section 7-1740-B.

If the previous file is unavailable, request a new rap sheet from Department of Justice.

If Department of Justice does not provide a new rap sheet, approve the transfer without the previous file information.

If the prior exemption is conditional, determine if the conditions placed on the exemption preclude transfer of the exemption to another facility or TrustLine. If no file is available, and the conditional exemption was granted by the Legal Division, contact them to obtain copies of any stipulations and decision and orders. If no file is available, and the conditional exemption was granted by Caregiver Background Check Bureau, request a copy of the exemption approval letter from the subject. If the subject cannot provide a copy of the approval letter, process the exemption transfer as a new exemption.

- If it is determined that the exemption can be transferred, complete Step III and send the completed form to DOJ.
- When DOJ has approved the transfer, they will send a copy of the form back to the receiving licensing agency indicating that the transfer has been completed.
- When the approved form is received from DOJ, the receiving licensing agency must send a copy of the approved transfer form to the original licensing agency. Licensing agencies receiving notice of a DOJ approved transfer to another licensing agency must inactivate the subject by submitting a no longer interested form to DOJ.

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

The receiving licensing agency must also review the date of the original Child Abuse Central Index check. If the original inquiry was made prior to January 1, 1999, the subject must submit a new CACI request as part of the transfer process. The licensing agency requesting the transfer must ensure that the applicant submits an LIC 198 (and the required processing fee) along with the Substitute Agency Notification Request (BCII 9002), with step I and II completed, to DOJ.

Licensure or certification cannot be approved until DOJ has approved the transfer.

Employment or residency cannot begin until DOJ has approved the transfer.

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 EM Section 7-1100 for clearance transfer procedures.

7-1800 SUBSEQUENT ARREST**7-1800**

The licensing agency that requested the original criminal record clearance will receive a subsequent report (rap back) of all arrests. The report will specify the violation, but usually will not indicate the disposition. Therefore, the licensing agency must complete an investigation to obtain information regarding the arrest and subsequent disposition. If no disposition has been reached, the licensing agency must determine if the facts underlying the arrest justifies an administrative action. The Department of Justice will send out a follow-up rap back report after a disposition has been made.

Investigations for arrests for crimes listed in (Evaluator Manual Section 7-2100) must be consistent with Evaluator Manual Section 7-1810 for state licensing and 7-1811 for county licensing. The licensing agency must determine whether a subject will be allowed to remain in the facility after the completion of the investigation. The licensing agency cannot remove a person during the arrest-only investigation.

Subsequent to an approval of a simplified or standard exemption, any arrest must be referred for investigation. If, after an investigation, a determination has been made to issue a DSS clearance, update the database to reflect the previous exemption.

**7-1810 STATE LICENSING: ARRESTS
- SUBSEQUENT TO CLEARANCE OR EXEMPTION****7-1810**

Upon receipt of a rap sheet with arrest-only information (no convictions) the Caregiver Background Check Bureau will review the rap sheet and determine the crime type of each arrest.

Arrests may be referred for investigation if the arrest is for a crime on the Non Exemptible or Exemptible Felony/Violent Misdemeanor crimes list (Evaluator Manual Section 7-2100 or 7-2125) or if the Caregiver Background Check Bureau believes that an investigation is warranted.

Arrests resulting in the following dispositions are **NOT** to be investigated, regardless of crime type. Arrests resulting in these dispositions shall be cleared.

☒ 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, record. 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

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 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 two 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, a phone call is not necessary to determine if the subject still wants to be licensed, registered or is still residing in the facility.

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

Arrests for all crimes on the non-exemptible crimes list, see Evaluator Manual Section 7-2100, (except those resulting in the dispositions noted above) must be referred for investigation. This includes arrests that have resulted in the following dispositions:

- ☒ Complainant Refused Prosecution
- ☒ Bail Exonerated
- ☒ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☒ Acquitted or Not Guilty

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1 and 6.0 or TL-11 letters.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540

► NO CONVICTION:

If the subject is the license applicant, update CBC and send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a TrustLine applicant, send the AO 2. If no response in 30 days, close.

If the subject is a potential employee, spouse, or dependent family member, update CBC and send a letter to the subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close.

If an investigation is warranted:

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

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. 19-62) with one of the following checked:

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

- A. ☐ Unable to Substantiate- Send directly to CBCB
- B. ☐ Applicant/voluntary closure - Send directly to CBCB
- 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 (EM Section 7-1537)

Exemptible Felony/Violent Misdemeanor

Arrests for crimes listed on the Exemptible Felony/Violent Misdemeanor crimes list (see Evaluator Manual Section 7-2125) may be referred for investigation. This includes arrests that have resulted in the following dispositions:

- ☒ Complainant Refused Prosecution
- ☒ Bail Exonerated
- ☒ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☒ Acquitted or Not Guilty

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

► **CONVICTION:**

- If the subject was convicted of a non-exemptible crime, send CBCB6.1 and 6.0 or TL-11 letters.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► **DIVERSION:** See Evaluator Manual Section 7-1540

► **NO CONVICTION:**

If the subject is the license applicant, update CBC and send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a TrustLine applicant, send the AO 2. If no response in 30 days, close.

If the subject is a potential employee, spouse, or dependent family member, update CBC and send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close.

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

If an investigation is warranted:

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

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. 19-62) with one of the following checked:

- A. ☐ Unable to Substantiate- Send directly to CBCB
- B. ☐ Applicant/voluntary closure - Send directly to CBCB
- 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 (EM Section 7-1537)

Nonviolent Misdemeanors / Infractions (See Evaluator Manual Section 7-2150)

Check DMV and available online court databases in the county where the subject was arrested for any disposition information.

► **CONVICTION** - If the subject was convicted of the crime for which he/she was arrested or for any crime on this list:

- Process the Exemption

► **DIVERSION:** See Evaluator Manual Section 7-1540

► **NO CONVICTION:**

- Update CBC
- Send DSS Clearance letter

► **NO CONVICTION WITH PRIOR EXEMPTION**

- Update CBC
- Process as an Exemptible Felony/Violent Misdemeanor (see preceding section)

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

Upon receipt of a rap sheet with arrest-only information (no convictions) the county licensing agency will review the rap sheet and determine the crime type of each arrest.

Arrests may be referred for investigation if the arrest is for a crime on the Non Exemptible or Exemptible Felony/Violent Misdemeanor crimes list (Evaluator Manual Section 7-2100 or 7-2125) or if county licensing agency believes that an investigation is warranted.

Arrests resulting in the following dispositions are **NOT** to be investigated, regardless of crime type. Arrests resulting in these dispositions **shall** be cleared.

☒ **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, record. 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**

If the subject is an employee of the facility, contact the licensee 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, 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 facility.

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

Arrests for all crimes listed on the Non-Exemptible crimes list, see Evaluator Manual Section 7-2100, (except those resulting in the dispositions noted above) must be referred for investigation. This includes arrests that have resulted in the following dispositions:

- ☒ Complainant Refused Prosecution
- ☒ Bail Exonerated
- ☒ Juvenile arrest only entries in which minor was released to parent or guardian
- ☒ Acquitted or Not Guilty

Check available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1 and 6.0.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540

► NO CONVICTION:

If the subject is the license applicant, send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a potential employee, spouse, or dependent family member, update CBC and send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close.

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.

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

- 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 for possible Administrative Action as conduct inimical.

Exemptible Felony/Violent Misdemeanor

Arrests for crimes listed on the exemptible Felony/Violent Misdemeanor crimes list (see Evaluator Manual Section 7-2125) may be investigated. This includes arrests that have resulted in the following dispositions:

- ☒ Complainant Refused Prosecution
- ☒ Bail Exonerated
- ☒ All Juvenile arrest only entries including those where minor was released to parent or guardian
- ☒ Acquitted or Not Guilty

Check available online court databases in the county where the subject was arrested for any disposition information.

► CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB6.1, 6.0 and 6.1c.
- If the subject was convicted for any crime *other* than a non-exemptible crime, process the exemption.

► DIVERSION: See Evaluator Manual Section 7-1540

► NO CONVICTION:

If the subject is the license applicant, send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a potential employee, spouse, or dependent family member, send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close. If the subject responds that they do not want the investigation to continue, close.

If an investigation is required or warranted:

- Request and review information contained in the subject's personnel file.

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

- 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 for possible Administrative Action as **conduct inimical**.

Nonviolent Misdemeanors/Infractions (See Evaluator Manual Section 7-2150)

Run DMV

► **CONVICTION** - If the subject was convicted of the crime for which he/she was arrested or for any crime:

- Process the Exemption

► **DIVERSION:** See Evaluator Manual Section 7-1540

► **IF NO CONVICTION:**

- Update file
- Send DSS Clearance letter

If the subject is the license applicant, send letter to the subject informing him/her that an investigation is being conducted (AO 5 or 6).

If the subject is a potential employee, spouse, or dependent family member, send letter to subject informing him/her that an investigation is being conducted (AO 4 or Confirmation Notification AO 3). If the subject responds that they do not want the investigation to continue, close.

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.

Before a DSS clearance is issued for an arrest

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 EM Section 7-2150). Refer for investigation if warrant is for an exemptible felony or violent misdemeanor (see EM Section 7-2125).
- Consult Legal for possible administrative action based on "conduct inimical".
- If the subject is a TrustLine applicant/registrant, close TrustLine case with a TL-10 letter.
- 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.

7-1812 **WARRANTS (CONTINUED)**

7-1812

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.
- Clear if warrant is for a non-violent misdemeanor (see EM Section 7-2150). Investigate if warrant is for an exemptible felony or violent misdemeanor (see EM 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 Section 7-1820, 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 EM Section 7-1810, Arrest –Subsequent to Clearance or Exemption. For county licensing see EM 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 EM Section 7-1535. For county licensing see EM 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 EM Section 7-1820. If decision is made not to rescind, close, Agency Initiated. See EM 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 non-exemptible crime the license must be revoked. 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 cbc6.0 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 cbc6.0 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 (cbc6.0).

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.

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.

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

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 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*

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.

**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.

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.

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.

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

- 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

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 EM 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 EM 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 non-exemptible crime the license must be revoked. If a 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.

- Within 7 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 TSO 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 cbc6.0 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 (cbc6.1) and the subject (cbc6.1 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 cbc6.1 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****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 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 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.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued)**7-1821**

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.

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.

7-1821 COUNTY LICENSING: CONVICTIONS - SUBSEQUENT TO CLEARANCE OR EXEMPTION (Continued) **7-1821**

- 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 cbc3 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.

Other Exemptible Offenses

If the conviction is for a crime other than a non-exemptible crime, the licensing agency must inform the licensee (cbc2.1) and the subject (cbc2.1 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.

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.

7-1900 ADMINISTRATIVE ACTIONS (Continued)**7-1900****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.

7-1900 ADMINISTRATIVE ACTIONS (Continued) 7-1900

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 2yr 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 LicensingCurrently 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:

- 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 maintained 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.

7-2100 NON-EXEMPTIBLE CRIMES

7-2100

NON-EXEMPTIBLE CRIMES¹**(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.

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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 207 or 209 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.

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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.

7-2100 NON-EXEMPTIBLE CRIMES (Continued)**7-2100****(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

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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.

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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

(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

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). This crime is non-exemptible unless the court expressly orders that the person does **not** have to register as a sex offender.
- 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

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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 for 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

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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.

7-2100 NON-EXEMPTIBLE CRIMES (Continued)

7-2100

(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

**7-2125 FELONIES / VIOLENT MISDEMEANOR ARRESTS
REQUIRING INVESTIGATION****7-2125**

In addition to arrests for crimes on the non-exemptible crimes list (EM Section 7-2100), arrests for the following crimes must be investigated.

Penal Code

71	Threatening public officers and employees and school officials
76	Threatening certain public officials, appointees, judges, staff or their immediate families
236, 237	False imprisonment
240 - 243	Assault/Battery
243.5 - 245	Assault
246	Shooting at an inhabited dwelling or building
246.3	Discharging firearm in grossly negligent manner
261(a)(5) or 261.1	Sex with a minor
266 e, f	Purchase/sell for immoral purposes
273(a)(b) or 273(a)(2)	Willful cruelty to a child
273.5	Willful infliction of corporal punishment on co-habitant resulting in a traumatic condition.
273.6	Intentional and knowing violation of court order to prevent harassment, disturbing the peace, or threats or acts of violence
417	Exhibit Weapon/Firearm
422	Threaten to commit crime
459, 460	1 st degree burglary
451(b), (c), (d)	Arson
520 - 524	Extortion
597	Cruelty to animals

**7-2125 FELONIES / VIOLENT MISDEMEANOR ARRESTS
REQUIRING INVESTIGATION (Continued)****7-2125**

646.9	Stalking
647(d)	Loitering in or about any public toilet for the purpose of engaging in or soliciting and lewd, lascivious or unlawful acts.
647f	Prostitution with positive AIDS
664/211	Attempted robbery

Health & Safety Code

11350 thru 11354	Possession; possession or purchase for sale; transportation, sale, giving away; adult inducing a minor, minor inducing a minor to violate provisions; use or employment of minors; of designated controlled substances
11355	Sale or furnishing substance falsely represented to be a controlled substance
11358 thru 11363	Sell/Manufacture/Transport Controlled Substances/Marijuana
11366	Opening or maintenance of any place for the purpose of selling, giving away, or using any controlled substance.
11370	Probation or suspension of sentence; prior conviction
11375	Possession, possession for sale or sale of designated controlled substances
11377	Possession of Controlled Substance/Marijuana
11378-79	Possession/Transportation/Sale/Furnishing controlled substance
11382	Sale or furnishing substances falsely represented to be a controlled substance
11383	Possession with intent to manufacture PCP

**7-2125 FELONIES / VIOLENT MISDEMEANOR ARRESTS
REQUIRING INVESTIGATION (Continued)****7-2125****Vehicle Code**

20001(A) Hit and Run, Injury/Death

23153 Felony DUI

Welfare & Institutions Code

10980(c)(2) Fraud to Obtain Aid (Felony)

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
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

7-2150 NONVIOLENT MISDEMEANORS / INFRACTIONS
(Continued)**7-2150**

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
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Federal Code – Title 8

USC 1182, 1227	Illegal Entry/Deportation
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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

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)
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7-2200 FREQUENTLY USED ACRONYMS

7-2200

CACI	Child Abuse Central Index	FCCH	Family Child Care Home
CBCB	Caregiver Background Check Bureau	FBI	Federal Bureau of Investigation
CCF	Community Care Facility	FFA	Foster Family Agency
CCL	Community Care Licensing (same as CCLD)		
CCLD	Community Care Licensing Division	H&SC	Health & Safety Code
CDSS	California Department of Social Services	IB	Investigations Branch (formerly known as RIS Regional Investigation Services and Program Investigation Unit)
CLETS	California Law Enforcement Telecommunications System	JOC	Judgment of Conviction
CORI	Criminal Record Offender Information	LIS	Licensing Information System
CRC	Criminal Record Clearance	LPA	Licensing Program Analyst
DOJ	Department of Justice	PC	Penal Code
FCCH	Family Child Care Home (previously Family Day Care)	RO	Regional Office of CCLD (formerly known as DO District Office)
		TSO	Temporary Suspension Order