

## **NON-EXEMPTIBLE CRIMES**

*Revised October 25, 2016*

### **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 with Section 186.22 -- Gang-related threats to victims or witnesses**

- Penal Code section 667.5(c)(20) was added by Proposition 21, effective March 8, 2000.
- Must be a felony conviction for threats to victims or witnesses, as defined in Penal Code section 136.1, and also 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) – Murder / attempted murder / voluntary manslaughter**

- Enhancements are specified in Penal Code section 667.5.
- This is not an exhaustive list of code sections under which murder, a attempted murder, or voluntary manslaughter could be charged.
- Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is for a similarly titled out-of-state crime or for a federal crime.
- Exemption may be granted to individuals convicted of murder or voluntary manslaughter if rehabilitated pursuant to Health & Safety Code section 1522(g)(1)(A)(ii).<sup>1</sup> Note that this exception is only in section 1522 and only applies to those covered by section 1522.

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<sup>1</sup> If the following conditions are met, an exemption may be granted for the following violent felonies specified at Penal Code § 667.5(c): (1) Murder or voluntary manslaughter; (2) mayhem; (7) any felony punishable by death or life in prison; and (8) any felony in which the individual inflicts great bodily injury on any person other than an accomplice pursuant to Penal Code section 12022.7, 12022.8, 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 individual uses a firearm pursuant to section 12022.3(a), 12022.5 or 12022.55. The conditions are that 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 ten (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 under Chapter 3.5 of Title 6 of Part 3 of the Penal Code.

**5) Penal Code Section 205 — Mayhem**

- Enhancements are specified in Penal Code section 667.5(c)(2).
- This is not an exhaustive list of code sections under which this crime can be charged.
- Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is for a similarly titled crime out of state.
- 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 Senate Bill 1992 as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871, effective January 1, 2001.
- Must be a felony conviction.

**7) Penal Code Sections 207, 208, 209, 209.5 — Kidnapping**

- Enhancements are specified in Penal Code section 667.5(c)(14) as a result of Proposition 21, effective March 8, 2000.
- A conviction for the attempt to commit Penal Code section 207 or 209 with intent to violate Penal Code section 261, 286, 288, 288a, or 289 is non-exemptible.<sup>2</sup>

**8) Penal Code Sections 211, 212, 212.5, 213, 214 — Robbery**

- Enhancements are specified at Penal Code section 667.5(c)(9).
- If an individual has been convicted of second degree robbery and has obtained a certificate of rehabilitation, he/she is 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.4<sup>th</sup> 960, 45 Cal.Rptr.3d 126 (2006). This exception only applies to those seeking exemptions for facilities covered under Health & Safety Code section 1522.

**9) Penal Code Section 215 — Carjacking**

- Section in its entirety without the need for deadly weapon charge added by Senate Bill 1992, effective January 1, 2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.
- Enhancements specified in Penal Code section 667.5(c)(17) by Proposition 21, which also removes the need for a weapon charge effective March 8, 2000.

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

**10) Penal Code Section 218 or 219 — Train wrecking**

- Enhancements are 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**

- Section in its entirety. Specified in Health & Safety Code sections 1522, 1568.09, 1569.17, and 1596.871, Penal Code section 290(c) and added to Penal Code section 667.5(c)(15) by Proposition 21, effective March 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 by Penal Code section 290(c).

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

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

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

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

**14) Penal Code Section 261(a)(1)(2)(3)(4) or (6) — Rape**

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

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

- Enhancements are specified in Penal Code section 667.5(c)(3).
- Penal Code section 262(a)(1) is specified in Penal Code section 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 section 262(a)(1) also is non-exemptible. Caregiver Background Check Bureau is advised to consult the Legal Division.

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

- Section in its entirety. 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 March 8, 2000.

- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Section in its entirety. Specified in Penal Code section 290(c). Therefore, a conviction for the attempt also is non-exemptible.

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

- Section in its entirety. Specified in Penal Code section 290(c). Therefore, a conviction for the attempt also is non-exemptible.

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

- Specified in Penal Code section 290(c). Therefore, a conviction for the attempt also is non-exemptible.

**20) Penal Code Section 266i(b) — Pandering a minor**

- Specified in Penal Code section 290(c). Therefore, a conviction for the attempt also is non-exemptible.

**21) Penal Code Section 266j — Providing a minor under 16 for lewd or lascivious act**

- Section in its entirety. Specified in Penal Code section 290(c). Therefore, a conviction for the attempt also is non-exemptible.

**22) Penal Code Section 267 — Abduction for prostitution**

- Section in its entirety. Specified in Penal Code section 290(c). Therefore, a conviction for the attempt to commit this crime also is non-exemptible.

**23) Penal Code Section 269 — Aggravated assault of a child**

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

**24) Penal Code Section 272 — Contributing to delinquency of a minor**

- Specified in Penal Code section 290(c). Therefore, a conviction for the attempt to commit this crime also is non-exemptible.
- **Must involve lewd or lascivious conduct.**

**25) Penal Code Section 273a(a) or 273a(1) if the conviction was prior to January 1, 1994 — Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death**

- Specified in Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.

- Conviction of Penal Code section 273a before January 1, 1965 is exemptible.

**26) Penal Code Section 273ab – Assault of a child 8 years or younger**

- Section in its entirety. Conviction for using force likely to produce great bodily injury and that resulted in the child’s death, in the child becoming comatose, or in the child suffering permanent paralysis.

**27) Penal Code Section 273d — Willfully inflicting any cruel or inhuman corporal punishment or injury on a child**

- Specified in Health & Safety Code sections 1522, 1568.09, 1569.17, and 1596.871.
- “Spousal abuse” was deleted by the 1977 amendment. If conviction was prior to 1978, then it must be for child abuse and not spousal abuse.

**28) Penal Code Section 285 — Incest**

- Section in its entirety. Specified in Penal Code section 290(c).
- A conviction for the attempt of this crime also is non-exemptible.

**29) Penal Code Section 286 – Sodomy**

- Specified in Penal Code section 290(c) and enhancements are in Penal Code section 667.5(c)(4). Need not be “by force” to be non-exemptible per Penal Code section 290(a)(2)(A).
- A conviction for the attempt of this crime also is non-exemptible.
- Rewritten by a 1975 amendment that 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 section 290(a)(2)(A)(F)(i) sets forth a procedure by which an individual can establish such acts were decriminalized by 1975 or 1976 legislation. Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is on or before January 1, 1976.

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

- Specified in Penal Code section 290(c), enhancements are in Penal Code section 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 also is non-exemptible.

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

- Specified at Penal Code section 290(c) and enhancements are in Penal Code section 667.5(c)(5). Need not be “by force” to be non-exemptible per Penal

Code section 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 section 290(a)(2)(A)(F)(i) sets forth a procedure by which an individual can establish such acts were decriminalized by 1975 or 1976 legislation. Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is on or before January 1, 1976.

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

- Specified in Penal Code section 290(c) by an amendment effective 1-1-90. Must be a felony conviction.
- A conviction for the attempt to commit this crime also is non-exemptible.
- Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is before January 1, 1990.

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

- Section in its entirety. Specified in Penal Code section 290(c) by an amendment effective September 20, 2006.
- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Section in its entirety. Specified in Penal Code section 290(c) by an initiative effective November 7, 2006.
- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Specified in Penal Code section 290(c) by amendment effective January 1, 1990 and enhancements are in Penal Code section 667.5(c)(16) by amendment effective January 1, 1992.
- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Section in its entirety. Specified in Penal Code section 290(c) by amendment effective September 20, 2006.
- A conviction for the attempt to commit this crime also is non-exemptible.

**37) Penal Code Section 289 — Sexual penetration by foreign object**

- Penal Code section 289 is specified in Penal Code section 290(c) and Health

& Safety Code Sections 1522, 1568.09, 1569.17, and 1596.971.

- A conviction for the attempt to commit this crime also is non-exemptible.
- A 1993-94 amendment repealed former Penal Code section 289.5 relating to punishment for rape or sodomy and included it in Penal Code section 289. Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is for Penal Code Section 289.5.

**38) 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 the person is noted on the rap sheet as required to register as a sex offender and the conviction for which registration is required is not listed on the rap sheet, then contact the Department of Justice Sex Offender Registration Unit as soon as possible to get the underlying crime. The underlying crime listed at Penal Code section 290(c) is non-exemptible, not the requirement to register. Nevertheless, Caregiver Background Check Bureau is advised to consult the Legal Division if the underlying crime is exemptible (not listed at Penal Code section 290(c)), but the individual was ordered by the court to register as a sex offender anyway. (See Penal Code section 290.006.)
- Penal Code sections 288.2 and 288.5 added to the list of offenses requiring registration. These sections were added by amendment effective January 1, 1990.

**39) Penal Code Section 311.1 — Child pornography sent or brought into state for sale or distribution**

- Section in its entirety. Added by amendment to Penal Code section 290(c), effective January 1, 2004.
- A conviction for the attempt to commit this crime also is non-exemptible.

**40) Penal Code Section 311.2(b), (c) or (d) — Knowingly sending or bringing child pornography into state for sale or distribution**

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

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

- Section in its entirety. Specified in Penal Code section 290(c).
- A conviction for the attempt to commit this crime also is non-exemptible.

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

**pornography**

- Section in its entirety. Specified in Penal Code section 290(c).
- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Section in its entirety. Specified in Penal Code section 290(c).
- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Section in its entirety. Specified in Penal Code section 290(c)
- A conviction for the attempt to commit this crime also is non-exemptible.

**45) Penal Code Section 314— Wilful and lewd exposure of private parts in public**

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

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

- Added by Senate Bill 1992, effective January 1, 2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.
- Must be a felony conviction.

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

- Senate Bill 1992, effective January 1, 2001, specifies Penal Code section 368 in its entirety.
- Formerly Penal Code section 368(a) or (b) if prior to January 1, 1999, and (b) or (c) thereafter as specified at Health & Safety Code sections 1522, 1568.09, 1569.17, and 1596.871.

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

- Added by Senate Bill 1992, effective January 1, 2001, as an amendment to Health & Safety Code sections 1522, 1569.17 and 1596.871.
- Must be a felony conviction.

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

- A felony violation of Penal Code section 451(a) specified at Health & Safety

Code Sections 1522, 1568.09, 1569.17 and 1596.871.

- Enhancements are in Penal Code section 667.5(c)(10).

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

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

**51) Penal Code Sections 518 with 186.22 — Extortion that is gang related**

- Added by Proposition 21, effective March 8, 2000, at Penal Code section 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). Review of court records may be necessary to determine enhancement and gang-related conduct.

**52) Penal Code Section 647.6— Annoy, molest child under 18**

- Section in its entirety. Specified in Penal Code section 290(c).
- Formerly Penal Code section 647a, prior to 1987.
- A conviction for the attempt to commit this crime also is non-exemptible.

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

- Specified in Penal Code section 290(c).
- Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction under Penal Code section 653f(c) is prior to January 1, 1980.
- A conviction for the attempt to commit this crime also is non-exemptible.

**54) Penal Code Sections 664 and 187 — Attempted murder**

- Enhancements are in Penal Code section 667.5(c)(12).
- Caregiver Background Check Bureau is advised to consult the Legal Division if the conviction is a similar crime from out of state.

**55) Penal Code Section 667.5(c)(7)<sup>3</sup> — Any felony punishable by death or imprisonment in the state prison for life**

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<sup>3</sup> If a Penal Code § 667.5(c) entry appears on a rap sheet alone without another Penal Code section violation, then contact the Legal Division.

- 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.

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

- On or after 7-1-77, the felony must have been pursuant to Penal Code section 12022.7, 12022.8, or 12022.9. Prior to 7-1-77, as specified in Penal Code sections 213, 264, and 461 or any felony in which the defendant used a firearm pursuant to Penal Code section 12022.3(a), 12022.5 or 12022.55.
- Exemption may be granted for employment in Community Care facilities only if rehabilitated under Health & Safety Code section 1522(g)(1)(A)(ii) if the underlying felony can be exempted.

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

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

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

- Enhancements are in Penal Code section 667.5(c)(22).
- Underlying conviction must be for a felony listed in Penal Code section 12022.53.
- Some subsections of Penal Code section 261 and 262 are exemptible.

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

- Added by amendment effective September 17, 2002, in Penal Code section 667.5(c)(23).

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

- Must be a felony conviction.
- Added by Senate Bill 1992, effective January 1, 2001, as an amendment to Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871.