
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><u>Transmittal No.</u> 07RM-02</td> </tr> <tr> <td style="padding: 2px;"><u>Date Issued</u> July 2007</td> </tr> </table>	<u>Transmittal No.</u> 07RM-02	<u>Date Issued</u> July 2007
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Subject:**REFERENCE MATERIAL – BACKGROUND CHECK PROCEDURES****Reason For Change:**

To Revise:

- Non-Exemptible crimes list
 - County Procedures in Section 7-1535 and 7-1811
 - List of Frequently Used Acronyms
- To Add:
- Rap sheet release information
 - Immediate removal verification instructions
-

Filing Instructions:**Revised Pages:**

1,2,6,17,18
 21-27, 56, 63-70
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7-1015 STATE REVIEW OF THE 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 9210's during the on-site county licensing program review to pull a sample of exemption cases that were not previously reviewed by Caregiver Background Check Bureau (10 or 10 % which ever is greater) to review. The program county liaison will also use the sample to check on the accuracy of the LIC 9210's completed by the county.

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

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

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

A 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.

7-1500 CRIMINAL RECORD TRANSCRIPT (RAP SHEET)**7-1500**

A criminal record transcript (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, Processing Arrest Only - Initial and](#) 7-1811, [Processing Arrest Only - Subsequent](#). 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 Criminal Offender Record Information (CORI) search response. To request a copy of his/her CORI, 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 CORI is to be sent.

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

7-1500 CRIMINAL RECORD TRANSCRIPTS (RAP SHEET) (continued) 7-1500

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

- refer for investigation (county licensing agencies will investigate) only if an exemption is requested.
- hold exemption decision until the investigation is concluded.

See EM Section 7-1535 for initial arrest only **processing** procedures and Section 7-1811 for subsequent arrest only **processing** procedures.

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, then take appropriate action.

7-1510 NON-EXEMPTIBLE CONVICTIONS - INITIAL**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.

7-1530 MISDEMEANOR CONVICTIONS - INITIAL**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 (cbcb 2) 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 PROCESSING ARREST ONLY - INITIAL**7-1535****State 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 can be cleared.

- Released/Detention only/849(B) Penal Code
- 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 does not, close "Agency Initiated".

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

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

7-1535 PROCESSING ARREST ONLY – INITIAL (continued)**7-1535**

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 CBCB 6.1, 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.**

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. Refer to EM 7-1535.5
- 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 CBCB 11 notice to Regional Office
- C. Process the conviction
- D. Follow the Substantiated Case Procedures (EM Section 7-1535.5)

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.

▶ CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB 6.1, 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

7-1535 PROCESSING ARREST ONLY – INITIAL (continued)**7-1535**

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 CBCB 11 notice to Regional Office
- C. Process the conviction
- D. Follow the Substantiated Case Procedures (EM Section 7-1535.5)

Non Violent 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

County Licensed Cases – Initial Inquiries

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 can be cleared.

- Released/Detention only/849(B) Penal Code
- Finding of Factual Innocence
- Infraction

7-1535 PROCESSING ARREST ONLY – INITIAL (continued)**7-1535**

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 to determine if the subject is still wants to be licensed or is still residing in the home is not necessary.

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

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 CBCB 6.1 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.

7-1535 PROCESSING ARREST ONLY – INITIAL (continued)**7-1535**

- 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**.

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 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 CBCB 6.1, 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).

7-1535 PROCESSING ARREST ONLY – INITIAL (continued)**7-1535**

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**.

Non Violent 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 CBCB 6.1, 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

7-1740 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 (cbcb 4.0, 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 (cbcb 21). 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 (cbcb 4.0 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. To request a copy of his/her CORI, 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 CORI 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 (cbcb 5.1, 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.

7-1770 EXEMPTION TRANSFERS (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.

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

7-1800 SUBSEQUENT ARRESTS AND CONVICTIONS**7-1800**

An exemption or a clearance may be rescinded as a result of either a subsequent conviction or a substantiated investigation of a subsequent arrest.

7-1810 SUBSEQUENT ARRESTS**7-1810**

The licensing agency that requested the original criminal record clearance will receive a subsequent arrest report (rap back) of all subsequent 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 7-1811, **Processing Arrest Only- Subsequent**. 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.

State Licensed and TrustLine Cases - Arrest Only- Subsequent Rap Sheets

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 can be cleared.

- Released/Detention only/849(B) Penal Code
- 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 to determine if the subject is still wants to be licensed or registered or is still residing in the facility is not necessary.

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.

7-1811 PROCESSING ARREST ONLY- SUBSEQUENT**7-1811**

▶ CONVICTION:

- If the subject was convicted of a non-exemptible crime, send CBCB 6.1, 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 CBCB 11 notice to Regional Office
- C. Process the conviction
- D. Follow the Substantiated Case Procedures (EM Section 7-1535.5)

7-1811 PROCESSING ARREST ONLY- SUBSEQUENT (Continued)**7-1811****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 CBCB 6.1, 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 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

7-1811 PROCESSING ARREST ONLY- SUBSEQUENT (Continued) 7-1811

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 CBCB 11 notice to Regional Office
- C. Process the conviction
- D. Follow the Substantiated Case Procedures (EM Section 7-1535.5)

Non Violent 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)

County Licensed Cases – Subsequent Arrest Only Rap Sheets

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 can be cleared.

- Released/Detention only/849(B) Penal Code
- 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.

7-1811 PROCESSING ARREST ONLY- SUBSEQUENT (Continued)**7-1811**

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

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 CBCB 6.1 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 PROCESSING ARREST ONLY- SUBSEQUENT (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 CBCB 6.1, 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.
- 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.

7-1811 PROCESSING ARREST ONLY- SUBSEQUENT (Continued)**7-1811**

- 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**.

Non Violent 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.

7-1815 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 (CBCB 6.1 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 (CBCB 3, 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 CBCB 3 or 3.1. See Evaluator Manual Section 7-1820, Convictions Subsequent to a Clearance or an 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 and 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. See Evaluator Manual Section 7-1811, Processing Arrest Only-Subsequent for arrest-only case processing information.

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, the subject must be excluded from the facility. See Evaluator Manual 7-1535.5, Substantiated Case Procedures for arrest-only case processing information.

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 CONVICTIONS SUBSEQUENT TO A CLEARANCE OR AN 7-1820 EXEMPTION

The following procedures must be followed upon receipt of criminal history information on a subject who has already received a clearance or a criminal record exemption.

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 (cbcb 6.0), and Regional Office response form to the Regional Office. The cbcb 6.0 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.

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.

7-1900 ADMINISTRATIVE ACTIONS**7-1900**

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.

7-1900 ADMINISTRATIVE ACTIONS (Continued)**7-1900****III. Employee or other Adult with Client Contact****a. Employee Exclusion**

An employee exclusion is based on a denied exemption or substantiated conduct inimical. If an exemption request has been denied or conduct inimical has been substantiated, and the employee is still working in the facility or still has contact with clients in care, the employee must be excluded from the facility. All exclusions must be approved by the Legal Division.

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.

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 MAINTENANCE OF CRIMINAL RECORD INFORMATION**7-2000**

Approved exemptions and support documentation must be retained for three years and archived for an additional three years (standard file retention rules) after the subject is no longer associated with the facility. Counties must retain exemption information in the facility file the subject is associated with. Licensing Regional Offices must retain all exemption information sent from the Caregiver Background Check Bureau in the facility file the subject is associated with.

Denied exemptions and support documentation must be retained indefinitely.

Approved individual exemptions must be maintained as active for two years after the subject is no longer associated with the facility. The licensing agency may associate the holder of an approved individual exemption to licensed facility during this period. The licensing agency must use the criteria and procedure for transferring an approved exemption (See Evaluator Manual Section 7-1770, Exemption Transfers).

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 and 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. To request a copy 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 CORI 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.

Penal Code Section 11505(b) (11) authorizes the licensing office to share criminal history information with the subject but *not* 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 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.

(2) Penal Code sections 187, 190-190.4 and 192(a) — 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 Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code 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

(3) Penal Code section 203 — 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)

(4) 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

(5) 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

(6) Penal Code section 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 Section 1522 of the Health and Safety Code.

³ A conviction for the attempt to commit any crime specified at Penal Code, § 290(a) (2) (A) is non-exemptible.

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

7-2100

(7) 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 at Penal Code, § 667.5(c)(17) by Proposition 21 which also removes need for weapon charge effective 3-8-2000

(8) Penal Code section 220 — Assault with intent to commit mayhem, rape, sodomy or oral copulation, etc.

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871, Penal Code, § 290(a)(2)(A) and added at 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 at Penal Code, § 290(a)(2)(A)

(9) Penal Code section 243.4 — Sexual Battery

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871, and Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(10) Penal Code section 261(a)(1)(2)(3)(4) or (6) — Rape

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt of this crime is non-exemptible

(11) Penal Code section 262(a)(1) or (4) Rape of Spouse

- Specified at Penal Code, § 667.5(c)(3)
- Penal Code, § 262(a)(1) is specified at Penal Code, § 290(a)(2)(A), 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

(12) Penal Code section 264.1 — Rape in concert

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 1596.871, and at Penal Code, sections 290(a)(2)(A), and 667.5(c)(18) by Prop 21 effective 3-8-2000
- A conviction for the attempt to commit this crime is non-exemptible

(13) Penal Code section 266 — Enticing minor into prostitution

- Specified at Penal Code, § 290(a)(2)(A) 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.

(14) Penal Code section 266c — Induce to sexual intercourse, etc. by fear or consent through fraud**(15) Penal Code section 266h(b) — Pimping a minor****(16) Penal Code section 266i(b) — Pandering a minor****(17) Penal Code section 266j — Providing a minor under 16 for lewd or lascivious act****(18) Penal Code section 267 — Abduction for prostitution**

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(19) Penal Code section 269 — Aggravated assault of a child

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

7-2100 NON EXEMPTIBLE CRIMES (Continued)

7-2100

(20) **Penal Code section 272 — Contributing to delinquency of a minor**

- Specified at Penal Code, § 290(a)(2)(A)
- Must involve lewd or lascivious conduct
- A conviction for the attempt to commit this crime is non-exemptible

(21) **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 at Health & Safety Code sections 1522, 1568.09, 1569.17 and 1596.871
- Conviction of Penal Code, § 273a before 1-1-65 is exemptible

(22) **Penal Code section 273d — Willfully inflicting any cruel or inhuman corporal punishment or injury on a child**

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 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

(23) **Penal Code section 285 — Incest**

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt of this crime is non-exemptible

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

7-2100

(24) Penal Code section 286 — Sodomy

- Specified at Penal Code, § 290(a)(2)(A) and “By force” at 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.

(25) Penal Code section 288 — Lewd or lascivious act upon a child under 14

- Specified at Penal Code, § 290(a)(2)(A), 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

(26) Penal Code section 288a — Oral copulation

- Specified at Penal Code, § 290(a)(2)(A) and “By Force” at Penal Code, § 667.5(c)(5)
- Note: need not be “By force” to be non-exemptible per Penal Code, § 290(a)(2)(A)
- 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

(27) Penal Code section 288.2 — Distributing lewd material to children

- Specified at Penal Code, § 290(a)(2)(A) 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

(28) Penal Code section 288.5 — Continuous sexual abuse of a child.

- Specified at Penal Code, § 290(a)(2)(A) 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

(29) Penal Code section 289 — Genital or anal penetration by foreign object

Penal. Code, § 289 is specified at Penal Code, § 290(a)(2)(A) 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

(30) Offenses listed at Penal Code section 290(a)(2)(A) — Registration of sex offenders (All such offenses are included in this list)

- Specified at Health & Safety Code sections 1522, 1568.09, 1569.17, 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(a)(2)(A) 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(a)(2)(A)) but the subject was ordered by court to register as a sex offender anyway. (See Penal Code, § 290(a)(2)(E)).
- Penal Code sections 288.2 and 288.5 added to list of offenses requiring registration by amendment effective 1-1-90

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

7-2100

- (31) **Penal Code section 311.1— Sent or brought into state for Possession, or distribution: child-related pornography**
- Added by amendment to Penal Code, § 290(a)(2)(A), effective 1-1-04
 - A conviction for the attempt to commit this crime is non-exemptible
- (32) **Penal Code section 311.2(b)(c) or (d) — Sending or bringing into state, Possessing for distribution: child-related pornography**
- Specified at Penal Code, § 290(a)(2)(A)
 - **A conviction for the attempt to commit this crime is non-exemptible**
- (33) **Penal Code section 311.3 — Sexual exploitation of a child**
- Specified at Penal Code, § 290(a)(2)(A)
 - A conviction for the attempt to commit this crime is non-exemptible
- (34) **Penal Code section 311.4 — Using a minor to assist in making or distributing child pornography**
- Specified at Penal Code, § 290(a)(2)(A)
 - A conviction for the attempt to commit this crime is non-exemptible
- (35) **Penal Code section 311.10 — Advertising or distributing child pornography**
- Specified at Penal Code, § 290(a)(2)(A)
 - A conviction for the attempt to commit this crime is non-exemptible)
- (36) **Penal Code section 311.11 — Possessing child pornography**
- Specified at Penal Code, § 290(a)(2)(A)
 - A conviction for the attempt to commit this crime is non-exemptible

7-2100 NON EXEMPTIBLE CRIMES (Continued)

7-2100

(37) Penal Code section 314(1) or (2) — Lewd or obscene exposure of private parts

- Specified at Penal Code, § 290(a)(2)(A). 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.

(38) 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

(39) 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

(40) 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

(41) 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)

(42) Penal Code sections 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 and Safety Code section 1596.871 (Family Child Care Homes, Child Care Centers and TrustLine).

7-2100 NON EXEMPTIBLE CRIMES (Continued)**7-2100****(43) 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)

(44) Penal Code section 647.6 or prior to 1987 former section 647a — Annoy, molest child under 18

- Specified at Penal Code, § 290(a)(2)(A)
- A conviction for the attempt to commit this crime is non-exemptible

(45) Penal Code section 653f(c) — Solicit another to commit rape, sodomy etc.

- Specified at Penal Code, § 290(a)(2)(A)
- 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

(46) Penal Code section 664/187 — Any Attempted Murder

- Specified at Penal Code, § 667.5(c)(12)
- CBCB is advised to consult CBCB legal team if conviction is from out of state for similar crime.

(47) 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.

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****(48) 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

(49) 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 at Penal Code, § 667.5(c)(13). Penal Code, §§ 12309 and 12310 added by Proposition 21 effective 3-8-2000

(50) Penal Code section 12022.53 —Enhanced sentence for listed felonies where Use of Firearm

- Specified at 667.5(c)(22) by Proposition 21, effective 3-8-2000
- Underlying conviction must be for a felony listed in Pen Code, 12022.53
- Some subsections of PC 261 and 262 are exemptible

(51) Penal Code section 11418(b) or (c)— Weapons of Mass Destruction

- Added by amendment effective 9-17-02, at Penal Code, § 667.5(c)(23)

(52) Business and 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 EXEMPTIBLE FELONIES/VIOLENT MISDEMEANORS
(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 and 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

7-2150 NON VIOLENT 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 and Professions Code

25658(a) Sell Liquor to Minor

Federal Code – Title 8

USC 1182, 1227 Illegal Entry/Deportation

Vehicle Code

20 Providing False ID to Peace Officer

13553 Drive Without A License

14601.5 Drive With A Suspended License

23152(a) and (b) Driving Under the Influence

40508(PC 1553) Failure to Appear

Health and Safety Code

11357 Possession of Marijuana

11364 Opium pipes: instruments for injecting or smoking controlled substances

Welfare and Institutions Code

14107 Fraud to Obtain Aid (Misdemeanor)

7-2200 LIST OF FREQUENTLY USED ACRONYMS 7-2200

CACI	Child Abuse Central Index	FCCH	Family Child Care Home
CCF	Community Care Facility	FBI	Federal Bureau of Investigation
CCL	Community Care Licensing (same as CCLD)	FFA	Foster Family Agency
CCLD	Community Care Licensing Division	H & S	Health and 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
CRC	Criminal Record Clearance	LIS	Licensing Information System
CBCB	Caregiver Background Check Bureau	LPA	Licensing Program Analyst
DOJ	Department of Justice	PC	Penal Code
FCC	Family Child Care (previously Family Day Care)	TSO	Temporary Suspension Order
RO	Regional Office of CCLD (formerly known as DO District Office)		