

DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 02: General Administration

Item 030: Employee Background Checks

Suggested changes send to: [DSS PSOA](#) Mailbox

Issued: **September 22, 2016**

References: Welfare and Institutions Code (WIC) [16501](#); Penal Code (PC) [220](#), [243.4](#), [264.1](#), [273a](#), [273d](#), [288](#), [289](#), [368\(a\)](#), [368\(b\)](#), [667.5\(c\)](#), [4852.01](#), [4852.03](#), [4852.05](#), [11105.2](#), and [11126](#)

Replaces Issue: New

Preamble

Child Welfare Policy and Procedure Guides are meant to be used as tools to relay best practice and staff expectations. It is understood that specific case scenarios may not always align themselves with the stated practices and that at all times what is of paramount importance is the Safety and Well-being of the children we are charged to protect.

Policy

Welfare and Institutions Code (WIC) [16501\(k\)\(1\)\(A\)](#) provides that counties may elect to obtain fingerprints on all employees who have frequent and routine contact with children, who are expected to have frequent contact with children, or whose duties change to include frequent and routine contact with children, if such children are alleged to be victims of abuse, neglect, or exploitation. It is the intent of the Department of Social Services (DSS) to establish a mechanism by which employees will obtain criminal record clearance through fingerprinting by the Department of Justice (DOJ). The need to protect an individual's privacy must be balanced with the need to protect our families.

Purpose

To advise employees of the legal requirements for fingerprinting and background checks, and how they will be obtained.

Background

According to WIC [16501\(k\)\(1\)\(C\)](#), if an employee has been convicted of anything other than a minor traffic violation, the Director or their designee will need to decide whether or not the employee warrants an exemption.

According to WIC [16501\(k\)\(1\)\(D\) and \(E\)](#), no exemption may be granted if the employee has been convicted of a sex offense against a minor, or has been convicted of Penal Code (PC) [220](#), [243.4](#), [264.1](#), [273a](#), [273d](#), [288](#), [289](#), [368\(a\)](#), [368\(b\)](#), or [667.5\(c\)](#). The only exception to this is if the employee was convicted of PC [667.5\(c\)\(1\)](#) or [667.5\(c\)\(7\)](#), has been rehabilitated in accordance with PC [4852.03](#), has maintained the conduct required in PC [4852.05](#) for at least ten years, and has the recommendation from the District Attorney; or if the employee has a certificate of rehabilitation

pursuant to PC [4852.01](#). If the employee meets this criteria and has been deemed rehabilitated, the Director or their designee may give the employee an opportunity to explain the conviction and consider that explanation in the evaluation of the criminal conviction record.

Procedure

Background Checks/Fingerprinting

The requirement for fingerprinting shall be made known to any employee who has frequent and routine contact with children, who are expected to have frequent contact with children, or whose duties change to include frequent and routine contact with children, if such children are alleged to be victims of abuse, neglect, or exploitation. DSS Personnel will provide such employees with the appropriate paperwork and instructions as to where they are to be fingerprinted.

Fingerprints will be submitted by DSS Personnel to DOJ, and DOJ will provide the results of the background checks to DSS Personnel. The results will be kept in the employee's departmental personnel file.

On the basis of information provided by the DOJ, the DSS shall make the following employment decisions:

- If the employee has no criminal history or just minor traffic offenses, they may be permitted to work around children.
- If the employee is barred from working around children due to a conviction for a criminal offense, but an exemption is possible, the DSS Director or their designee will provide a statement to the employee explaining the steps needed to be taken to request an exemption.
 - The Director or their designee will determine whether there is substantial and convincing evidence to support a reasonable belief that the employee is of good character so as to justify frequent and routine contact with children. If so, the Director or their designee may exempt the employee. An exemption letter will be provided to the employee and a copy placed in their departmental personnel file.
 - Any employee who has frequent and routine contact with children, who are alleged to be victims of abuse, neglect, or exploitation, may be prohibited from having such contact while going through the exemption process.
- If the employee is barred from employment working around children due to a criminal conviction of one of the specified above offenses, written notice will be issued to the employee, and any such employee may be terminated.
- Efforts may be made, on a case-by-case basis, to place any employee who is barred from working around children into an alternate position/assignment depending upon availability and the qualifications of the employee.

Subsequent Arrest Notifications

Subsequent arrest notifications from the DOJ will be sent to the DSS Personnel as provided under PC [11105.2](#). All reports of subsequent criminal convictions beyond minor traffic violations will be forwarded to the Director or their designee, who will decide on the following:

- If the employee is barred from employment working around children due to a conviction for a criminal offense, but an exemption is possible, the employee will be advised of the steps needed to request an exemption.
 - The Director or their designee will determine whether there is substantial and convincing evidence to support a reasonable belief that the employee is of good character so as to justify frequent and routine contact with children. If so, the Director or their designee may exempt the employee. An exemption letter will be provided to the employee and a copy placed in their departmental personnel file.
 - While going through the exemption process, the employee may be prohibited from having contact with children at work.
- If the employee is barred from employment working around children due to a criminal conviction of one of the above specified offenses, the employee will be notified and may need to be terminated.
- Efforts may be made, on a case-by case basis, to place any employee who is barred from employment working around children into an alternate position/assignment, depending upon availability and the qualifications of the employee.

Record Keeping

DSS Personnel will review criminal history reports received for disqualifying violations utilizing the following guidelines and procedures:

- The criminal history reports shall not be disseminated to any other person, department, or agency.
- If no disqualifying convictions are identified, the clearance date shall be entered onto a label inside the employee's departmental personnel file. Upon the employee no longer working around children, the DOJ shall be notified to ensure that subsequent arrest notifications are no longer received.
- Any subsequent arrest reports for employees no longer working around children shall be immediately returned to DOJ. The DSS will not record or otherwise retain any information received as a result of such subsequent arrest notice.
- Should an employee question the accuracy of their criminal history report or subsequent arrest notification, they shall be directed to contact the DOJ in accordance with PC [11126](#).