

DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 15: Resource Family Approval, Updates & Due Process

Item 004: Criminal Records Exemptions

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

Issued: October 8, 2021

References: [ACL 16-10](#); [ACL 16-58](#); [Welfare and Institution Code \(WIC\), Section 16519.5](#), [Written Directives Version 7](#)

Revisions in red

Replaces Issue: June 9, 2017

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

Department of Social Services (DSS) staff shall ensure the safety of children in all placements. Exemptions may be granted to an individual who presents substantial and convincing evidence satisfactory to the DSS that he or she has been rehabilitated and presently of such good character as to justify the granting of the exemption. The individual also must not have been convicted of a crime listed in Health and Safety Code section [1522 \(g\) \(1\) \(A\) through \(g\) \(1\) \(C\)](#).

Purpose

Children placed in out-of-home care shall be placed in a safe and appropriate home, which is the least restrictive placement whenever possible. When the most appropriate placement of a child is in the home of a caregiver who requires a criminal record exemption, an exemption must be completed by a Resource Family Approval (RFA) Social Worker (SW) prior to RFA approval.

Definitions

Per Evaluator Manual, Background Check Procedures Sections [7-1700](#), there are three types of exemptions: Simplified, Standard, and Conditional.

Simplified Exemption: The Simplified Exemption process is a review based only on the examination of the convicted person's California Department of Justice (DOJ) and all criminal records. It may be used for subjects convicted of nonviolent misdemeanors that are over five years old. This exemption does not have to be requested by the subject of the exemption and is only to be used when a criminal record meets the simplified exemption approval criteria. All approvals/denials must comply with the decision criteria outlined in Section [7-1720](#) of the Evaluator's Manual. The RFA Program Manager (PM) can approve a Simplified Exemption.

Standard Exemption: The Standard Exemption process requires the compilation and evaluation of relevant information that would support the approval or denial of an exemption request. A decision

can only be made after all submitted documentation has been reviewed. All approvals/denials must comply with the decision criteria outlined in Section [7-1735](#) and the chart in Section [7-1736](#) of the Evaluator's Manual. The DSS Director or designee must approve all Standard Exemptions.

Conditional Exemption: When a subject meets all exemption approval criteria for a standard exemption but there remains concern as to the appropriateness of an exemption approval a Conditional Exemption may be issued. For example, if the subject has a suspended driver's license a Conditional Exemption may be issued indicating that the subject has been informed that he/she cannot transport children. The DSS Director or designee must approve all Conditional Exemptions. Once approved, the subject is sent the signed Conditional Exemption Agreement along with their appeal rights. If the subject does not indicate his/her disagreement with the conditions set, the exemption approval is completed. Failure to comply with the conditions set may result in the home being disapproved.

Procedure

When a Resource Family Application ([Form RFA-01\(A\)](#)) or a Request for Emergency Placement with Relative/NREFM ([CWS EP- 0037](#)) has been received by designated RFA staff, the assigned RFA SW shall conduct a criminal record review of all subjects specified in Health and Safety Code section [1522](#) and [Written Directives Version 7](#), Section 6-03A. Per [Written Directives Version 7](#), Section 6-03B, an exemption is required for any conviction of a crime other than a minor traffic violation or any arrest for an offense specified in Health and Safety Code section [1522\(e\)](#). The individual also must not have been convicted of a crime listed in Health and Safety Code section [1522 \(g\) \(1\) \(A\) through \(g\) \(1\) \(C\)](#).

RFA SW Responsibilities

Determine whether the subject is eligible to request an exemption, and if so, which level of exemption applies: Simplified, Standard or Conditional.

- The RFA SW shall notify a Resource Family to act immediately to remove from the home or bar from entering the home any person described in [Written Directives 7](#), Section 6-03A(a), while DSS considers granting or denying an exemption, as follows:
 - Any person who has been convicted of or is awaiting trial for a sex offense against a minor.
 - Any person who has been convicted of a felony.
 - Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in the Health and Safety Code Section 1522(c)(3).
- Upon notification, the Resource Family shall comply with the notice. If the individual who is the subject of the notice is the Resource Family, the Resource Parent's spouse or a dependent adult, DSS shall not order the Resource Family to remove the individual from the home but shall act to temporarily suspend the approval, if applicable, in accordance with Welfare and Institutions Code (W&IC) section 16519.5(g)(5)(iv), or take other appropriate action.

Complete exemption forms and notify the applicant and subject of the exemption process, as appropriate.

Provide the appropriate exemption request forms to the subject with the written notice to initiate the exemption request process.

The RFA SW shall write an exemption memo and prepares the exemption packet indicating the recommendations.

Upon receipt of an approved exemption, the RFA SW shall document the date the criminal exemption was requested and approved on the Resource Family Written Report ([Form RFA-05](#)).

Upon receipt of a denied exemption, the RFA SW and SWS shall consult with the Legal Division prior to serving a Notice of Action (NOA) of a criminal record exemption, or exclusion of an individual.

After Legal Division consultation, the RFA SW shall provide the subject and the applicant or Resource Family with a Notice of Action regarding the denial or rescission. The NOA shall state the authority to deny the requirement for a criminal record exemption or to rescind an exemption, the specific criminal conviction for which the exemption was denied, and the individual's right to appeal the County's decision pursuant to [Written Directives Version 7](#), Article 12.

The DSS shall take the following actions if a criminal record exemption is denied or rescinded:

- For an applicant, denial of the application for Resource Family Approval.
- For a Resource Family, rescission of Resource Family Approval.
- For an adult who resides or is regularly present in the home, if the individual will continue to reside or be regularly present in the home, then denial of the application or rescission of the approval.

Maintenance of Records

RFA staff shall maintain written documentation containing the reasons for granting, denying or rescinding a criminal record exemption.

RFA staff shall securely maintain all written documentation and records related to a background check and exemption as specified in [Written Directives Version 7](#), Sections 6-03A and 6-03B, in a Resource Family file for each applicant and Resource Family.

The records shall be securely maintained for at least three years following the date of an application of denial, rescission of approval, or surrender of approval.

County Reporting Requirements

RFA staff shall log exemptions and application denials in the RFA database.

The DSS shall provide the California Department of Social Services (CDSS) a quarterly log of all applications that were denied.

The DSS shall also upload a NOA for the denial or rescission of RFA or the denial or rescission of a criminal record exemption. All required information will be entered into the NOA database maintained by CDSS.