

DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 05: Placement

Item 021: Criminal Records Exemptions

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

Issued: **March 7, 2014**

References: [AB 1695](#) (Chapter 653, Statutes of 2001); [Welfare and Institutes Code Section 309](#); Community Care Licensing Division (CCLD) [Title 22, Division 6, Chapter 9.5 - Evaluator Manual](#), Background Check Procedures Sections [7-1720](#), [7-1730](#), [7-1731](#), [7-1731.1](#), [7-1735](#), [7-1736](#)

Revisions in Red

Replaces Issue: September 27, 2011

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

All Resource Family Homes are required to meet the health and safety standards in order to become licensed or approved. [Assembly Bill \(AB\) 1695](#) clarifies that relative and non-relative extended family members (NREFM) are approved, and all other Foster Family homes are licensed.

Department of Social Services (DSS) staff shall ensure the safety of children in all placements, relative and NREFM caregivers and their homes will be evaluated according to the same health and safety standards established for licensing County Foster Family Homes.

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 relative or NREFM who has a criminal record or Child Protective Services (CPS) referral history (inconclusive or substantiated), an exemption must be completed by the **Home Approval Unit (HAU) Social Worker (SW)** prior to approval for placement.

Definitions

Criminal Record Exemption Requests

Per Evaluator Manual, Background Check Procedures Sections [7-1735](#) and [7-1736](#), if the applicant's criminal record meets all specified criteria and the applicant submits substantial and convincing evidence of good character, an exemption may be considered.

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. This exemption does not have to be requested by the subject of the exemption (subject) 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 HAU 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 the simplified and or 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.

Note: Exemptions only apply to the home, and are not an agreement to placement. Placement is a separate decision that is made by the Case Managing (CM) SW and their Social Work Supervisor (SWS).

Procedure

When an *Application for Assessment of Relative/NREFM Home* (form CWS 0037) of a dependent minor is submitted by the CM SW, the HAU shall conduct a criminal record review of all subjects specified in Health and Safety Code [1522\(b\)](#). An exemption is required for any criminal history other than minor traffic infraction or CPS referral history where the allegation was determined unfounded.

HAU SW Responsibilities

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

Document the application status in CWS/CMS, complete exemption forms, and notify the applicant and subject of the exemption **process**, as appropriate.

Provide the appropriate exemption request forms **to the relative/NREFM** with the written notice to initiate the exemption request process.

Requests for a Criminal Record Exemption

The HAU SW will write an exemption memo and prepares the exemption packet indicating the recommendations.

If the request for exemption of criminal history is approved, the HAU SW shall document in the “Case Alerts” section of CWS/CMS that a criminal record exemption is on file and any conditions of the exemption.

The HAU SW shall document the exemption information in CWS/CMS in the subject’s Collateral notebook.

If the collateral notebook has not previously been created in CWS/CMS, the HAU SW shall select “Create a New Collateral” and create a collateral notebook for the subject of the exemption.

The Exemption Request date and the Exemption Granted dates shall be documented in the Background Check tab in the Collateral notebook.

- Upon receipt of an approved exemption, the HAU SW shall document the date the criminal exemption was requested and approved on the [SOC 815](#) form.
- Upon receipt of a denied exemption, applicant(s) shall be notified in writing of the reasons set forth for the denial and be advised of the right to file for a grievance hearing. The reason for the denial can not include information about the conviction(s), but must include the specific licensing regulation(s) referenced in making the denial decision, to allow the subject of the exemption to make an informed decision as to whether to appeal the denial.
- All exemptions involving exemptible violent felonies must be approved by the Director or designee.
- The Director or designee will not approve a criminal record exemption for any non-exemptible crimes outlined in Health and Safety (H&S) Code Section [1522\(g\)\(1\)\(C\)](#).
- Any waiver of probationary time requirements or time span from last date of conviction as specified in Sections [7-1735](#) and [7-1736](#) must be approved by the Director or designee.

Standard and Conditional Exemption Placement Services Case Consultation

When the HAU SW receives all the background clearances and it has been determined that a Standard or Conditional criminal exemption is warranted, the HAU SW will schedule a preliminary case consultation with the CM SW and their SWS to review background clearances and to share any safety concerns.

If during the case consultation it is determined that there are concerns around safety and placement, a mapping is scheduled by the HAU SW to include the CM SW, relative/NREFM, any support person the relative/NREFM wishes to invite, the parent, and/or minor if appropriate.

At the mapping the following shall be discussed:

- What do we like about placement with this relative/NREFM?
- What could be positive, successful or good about this placement?
- Is it in the child(ren)'s best interest to be placed with this relative/NREFM?
- What worries us about placement?
- What needs to happen – next steps?

Child Welfare History Reviews

The HAU SW shall do a thorough Child Welfare history review and will review the findings with the HAU SWS. The HAU SWS will then consult with the HAU Program Manager (PM) and a determination of approval will be determined by the HAU PM.

CM SW Responsibilities

When an exemption is granted with conditions and the decision is made to place with the relative/NREFM, the CM SW must ensure the conditions are enforced.

Report to the HAU SW any change in family composition, residency, and criminal status or any other information affecting home approval.

Maintenance of Records

All exemption files and support documentation must remain on file with HAU for five (5) years and in archived files for another fifteen (15) years after the subject is no longer licensed/approved or residing in the home before being destroyed.

Denied request memos must remain on file indefinitely.

Time Frame for Approvals/Denials

If a Standard or Conditional exemption is required, HAU staff will make every effort to process the exemption as quickly as possible. However, due to the time consuming nature of gathering and evaluating the required information, the process may take a minimum of 75 days from the date the Live Scan is received.

Approvals remain valid unless/until subsequent arrest/conviction information is received on subject.

Denials based on prior license revocation are valid for two (2) years.

Denials based on criminal record or CPS referral history are valid until circumstances change which merit a new request for exemption consideration.