

**Criminal Records Assessment & Exemption Requirements
As of January 1, 2018 (per changes in AB 404 & SB 213)**

Note: All information contained in this presentation is for information purposes only and is not legal advice. Everyone is reminded to complete his or her own legal research.

FOR EMERGENCY PLACEMENT

Who must submit to a criminal records check?

1. All persons over 18 living in the home excluding a NMD
2. Any person over 18 regularly present in the home other than those providing professional services (at the discretion of the county welfare department)
3. Any person over 14 who the department believes may have criminal record (at the discretion of the county welfare department), but this does not apply to children under the jurisdiction of the juvenile court. *WIC §361.4(a)(2)*

How is the check done? California Law Enforcement Telecommunications System (“CLETS”) *WIC §361.4(a)(2)*
Within 10 days of CLETS or 5 days of emergency placement (whichever is sooner), the social worker shall ensure that a fingerprint clearance check is obtained through the DOJ. *WIC §361.4(c)*

If there is no criminal record...a child may be placed on the home on an emergency basis. *WIC 361.4(b)(1)*

If there are arrests...an arrest record shall not be used to deny or rescind an approval unless the department investigates the incident and secures evidence to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. *HS §1522(e)(1)*

However, if a prospective caregiver has been arrested for any of these crimes, there must be an investigation and a child cannot be placed until the agency & courts have considered the investigation results when determining whether placement is in the best interests of a child. *WIC §361.4(b)(4)*

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| Any crime listed in Penal Code 290: sex offender registry |
| Penal Code 245: assault with a deadly weapon |
| Penal Code 273ab: willful injury to a child 8 years of age or younger |
| Penal Code 273.5: corporal injury to spouse |
| Penal Code 273a(b): misdemeanor willful injury to a child |
| Penal Code 273a, paragraph 2 (prior to 1994) |
| Any crime listed in HS §1522(g) – see Category 1 below |

If a prospective caregiver or anybody subject to a criminal record check has a conviction other than a minor traffic violation...

For convictions in Category 1 (see chart), a child cannot be placed in the home. *WIC §361.4(b)(5)*

For all other convictions, a child cannot be placed until an exemption has been granted. *WIC §361.4(b)(2)*

EXCEPTION: A child can be placed pending an exemption if the deputy director or director of the county welfare department, or his or her designee, determines that the placement is in the best interests of the child and a party to the case does not object. *WIC §361.4(b)(3)*

EXCEPTION TO THE EXCEPTION: No child can be placed pending an exemption for a misdemeanor conviction for statutory rape, indecent exposure or financial abuse of an elder. *WIC §361.4(b)(3)*

FOR RESOURCE FAMILY APPROVAL

Who must submit to a criminal records check?

Each resource family applicant and all adults residing in or regularly present in the home.
WIC §16519.5(d)(2)(A)(i)(I)

EXCEPTION: Those exempt from fingerprinting as set forth in *HS§1522(b)*. Includes:

1. Adult friends & family who come into the home for no longer than defined by Department in regulations (defined in Written Directives, Version 4.1 as one month) provided they are not left alone with the child. However, the foster parent acting as a reasonable and prudent parent may allow the adult friend/family to provide short-term care as a babysitter.
2. Parents of the child's friend who the child is visiting in the friend's home provided the friend, foster parent or both are present. However, the foster parent acting as a reasonable and prudent parent may allow the friend's parent to provide short-term care as a babysitter without the friend being present.
3. Individuals engaged by the foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as short-term babysitters.

EXCEPTION TO THE EXCEPTION: Written Directives, Version 4.1 indicate that a County can require a background check for an exempt individual, provided that the individual has contact that may pose a risk to the health and safety of a child or NMD placed with an applicant/Resource Family. *SECTION 6-03A: Background Check*

How is the check done?

Receipt of a fingerprint-based state and federal criminal offender record information search response.
WIC §16519.5(d)(2)(A)(i)(I)

If there are arrests... a County shall consider the information and may conduct an investigation. The individual to whom the conviction or arrest pertains shall submit a written signed statement concerning the circumstances of each conviction or arrest. An investigation of the facts regarding arrests or convictions may lead to a denial of Resource Family Approval.

However, if an individual's criminal record indicates an arrest for an offenses specified in Health & Safety Code§ 1522(e) (see box on previous page), the County must conduct an investigation before an exemption or clearance can be granted.

If a County finds that an individual is awaiting trial, including an active warrant for an arrest, it may cease processing the criminal record information until the conclusion of the trial.

Written Directives, Version 4.1, SECTION 6-03A: Background Check

If there are convictions other than minor traffic violations...

For convictions in Category 1, the applicant cannot receive a resource family approval.
WIC §16519.5(d)(2)(A)(i)(III)

For convictions in Category 2 or 3, the applicant cannot receive a resource family approval unless an exemption has been granted. *WIC §16519.5(d)(2)(A)(i)(III)*

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| CATEGORY 1: NON-EXEMPTIBLE HS §1522(g)(2)(A)(i-iii) | Felony conviction for child abuse or neglect |
| | Felony conviction for spousal abuse |
| | Felony conviction for crimes against a child, including child pornography |
| | Felony conviction for crimes involving violence, including rape, sexual assault, or homicide, but not assault and battery |
| | Felony conviction within the last five years for physical assault, battery or a drug or alcohol related offense |
| | Penal Code 220: assault with intent to commit to felony |
| | Penal Code 243.4: sexual battery |
| | Penal Code 264.1: rape |
| | Penal Code 273a(a): felony willful injury to a child (Penal Code 273(a), paragraph 1 prior to 1994) |
| | Penal Code 273ab: willful injury to a child 8 years of age or younger |
| | Penal Code 273d: corporal punishment to a child |
| | Penal Code 288: lewd acts with a child under 14 |
| | Penal Code 289: forcible sexual penetration |
| | Penal Code Any crime listed on 290(c) – sex offender registry – EXCEPT Penal Code 261.5 (stat rape misdemeanor) & Penal Code 314 (indecent exposure misdemeanor) |
| | Felony charge for Penal Code 368: crimes against elders, dependent adults and persons with disabilities |
| | Any crime listed in Penal Code 667.5(c): enhancements for violent felonies |
| | Business and Professions Code 729: sexual misconduct by physician, therapist, etc. |
| | Penal Code 206: torture |
| | Penal Code 215: carjacking |
| | Penal Code 347(a): poisoning |
| Penal Code 417(b): brandishing a weapon around a school, daycare, etc. | |
| Penal Code 451(a): arson | |
| CATEGORY 2: EXEMPTION AFTER INVESTIGATION HS §1522(g)(2)(B)(i-ii) | Misdemeanor conviction not listed in Category 1 that occurred within the last five years |
| | Felony conviction not listed in Category 1 that occurred within the last 7 years |
| | Misdemeanor conviction for Penal Code 261.5: statutory rape |
| | Misdemeanor conviction for Penal Code 314: indecent exposure |
| | Misdemeanor conviction for Penal Code 368: financial abuse of elder |
| May grant exemption if Department has substantial and convincing evidence to support a reasonable belief that the person is of present good character necessary to justify the granting of an exemption. <i>HS §1522 (g)(2)(B)</i> | |
| Shall consider all reasonably available information, including but not limited to: | |
| <ul style="list-style-type: none"> • Nature of the crime, • Period of time since the crime was committed, • Number of offenses, • Circumstances surrounding the commission of the crime indicating the likelihood of future criminal activity, • Activities since the conviction (including employment, participation in therapy, education or treatment), • Whether the person successfully completed probation or parole, obtained a certificate of rehabilitation or was pardoned, • Any character references or other evidence submitted by the applicant • Whether the person is demonstrating honesty and truthfulness concerning the crime during the application/approval process and made reasonable efforts to assist the Department in obtaining records and documents concerning the crime(s). | |
| <i>HS §1522(g)(2)(C)</i> | |
| CATEGORY 3: FAST- TRACK EXEMPTION HS §1522(g)(2)(D) | Misdemeanor convictions not listed in Category 1 or 2 that occurred 5 or more years ago |
| | Felony convictions not listed in Category 1 or 2 that occurred 7 or more years ago |
| Shall grant an exemption if the person’s state or federal criminal history information received from the DOJ independently supports a reasonable belief that the person is of present good character necessary to justify the granting of an exemption. | |
| However, the Department may at its discretion require an exemption after an investigation using the criteria in Category 2, as necessary to protect the health and safety of a child. <i>HS §1522(g)(2)(D)</i> | |
| Notably, the following Category 3 misdemeanor convictions should be given careful consideration: Penal Codes 272(b): Enticing a child away from home using the internet; 273a: Willful cruelty to a child; 311: Child porn; 647.6: Annoying molesting a child | |

