



# BAY AREA LEGAL AID

## Youth Justice Team

### RFA Cheat Sheet for Emergency Placement & Criminal Record Exemptions

This cheat sheet is compiled from the following resources:

- Alliance for Children's Right's [RFA Guide & Toolkit](#)
- State of California- Health and Human Services Agency's RFA [Background Assessment Guide](#)

#### Emergency Placement

#### What is an emergency placement and why is it necessary?

When a child has been taken into custody, or when the sudden unavailability of a caregiver requires a change in placement for a dependent child, a relative/NREFM may request temporary (i.e., emergency) placement of the child. The County has the discretion to place the child with that relative/NREFM prior to approval as a resource family. WIC [§309](#), [§361.4](#), and [§361.45](#).  
*See [RFA BAG](#) page 69*

#### Are criminal record checks required for an emergency placement?

- Yes.
- The County will Conduct California Law Enforcement Telecommunications System (CLETS) and abuse checks on:
  1. All persons over 18 living in the home excluding a non-minor dependent.
  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). This does not apply to children under the jurisdiction of the juvenile court. [WIC 361.4\(a\)\(2\)](#).

*See [RFA Toolkit](#) Appx. A-43*

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### **If the information indicates that the person has no criminal record,**

a child may be placed in the home on an emergency basis. [WIC §361.4\(b\)\(1\)](#)

### **If the information indicates that the person has arrests,**

an arrest record shall not be used to deny or rescind an emergency placement or approval, unless the department investigates the incident and secures evidence to establish the criminal conduct may pose a risk to the health and safety of the child. [HS §1522\(e\)\(1\)](#)

**However**, if a prospective caregiver has been arrested for any of the below-listed crimes, there must be investigation. A child cannot be placed until the agency & courts have considered the investigation results when determining whether placement is in the best interest of a child. [WIC §361.4\(b\)\(4\)](#)

1. Any crime listed in [Penal Code §290](#): sex offender
2. [Penal Code §245](#): assault with a deadly weapon
3. [Penal Code §273ab](#): willful injury to a child 8 years of age or younger
4. [Penal Code §273.5](#): corporal injury to spouse
5. [Penal Code §273a\(b\)](#): misdemeanor willful injury to a child
6. [Penal Code §273a](#), paragraph 2 (prior to 1994)
7. Any crime listed in [HS §1522\(g\)](#) – see Category 1

### **If the information indicates that the person has criminal convictions,**

the **first step** determine what category the conviction falls into from this [list](#), **then** determine what is required to request an Exemption in the "RFA Criminal Background Exemptions" section below.

#### **Criminal Conviction Categories:**

Category 1: Non-Exemptible [HS §1522\(g\)\(2\)\(A\)\(i-iii\)](#)

- The applicant cannot receive family resource approval.

Category 2: Standard Exemption after Investigation [HS §1522\(g\)\(2\)\(B\)\(i-ii\)](#)

Category 3: Simplified / Fast Track Exemption [HS §1522\(g\)\(2\)\(D\)](#)

See [RFA Toolkit](#) Appx. A-43

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### What if an emergency placement is necessary before an Exemption is granted?

If emergency placement is necessary before an Exemption is granted, 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 interest of the child and a party to the case does not object. WIC §361.4(b)(3)

But, 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)

See RFA Toolkit Appx. A-43

### What triggers the full RFA background check process?

A live scan fingerprint check shall be conducted within 5 business days following an emergency placement or within 10 calendar days of the CLETS check, whichever occurs sooner. The live scan fingerprint check triggers the RFA background check process.

See RFA BAG page 69



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### RFA Criminal Background Exemptions

If the results of the live scan fingerprint check (i.e., CORI or rap sheet) reveal any conviction(s) for an exemptible crime(s) (individuals with a non-exemptible conviction are ineligible for an Exemption) the process for requesting an Exemption should be initiated as soon as possible.

See [RFA BAG](#) page 41

### What are the different types of Exemptions?

Simplified Exemptions (Category 3) are granted based solely on the information contained in the rap sheet and self-disclosure form.

Standard Exemptions (Category 2) require the individual to request an Exemption in response to a written "Exemption Needed" notice the individual received in the mail. The standard Exemption process is required to evaluate whether the county may approve an Exemption based on substantial and convincing evidence that the individual is of present good character and to provide adequate due process if the requested Exemption has been denied. [HS §1552\(g\)\(2\)\(B\)](#).

See [RFA BAG](#) page 70



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### What does the Department take into consideration when determining whether a Standard Exemption should be granted?

- Exemption Needed notices require that the following be submitted within forty-five (45) calendar days from the date on the notice:
  - A signed Exemption needed letter indicating that an Exemption is being requested, from either (1) the Resource Family applicant, (2) the Resource Family applicant on behalf of the individual, or (3) the individual on his/her own behalf if the Resource Family chooses not to request an Exemption.
  - A signed copy of the original Resource Family Criminal Record Statement ([RFA 01B](#)).
  - A written statement signed by the individual describing the events surrounding each conviction, including the approximate date, what happened, why it happened, and any other information he/she feels is important about the crime. The individual also must describe what he/she has done since the conviction to ensure he/she will not be involved in further criminal activity.
  - Documentation relevant to the conviction listed as the basis for the Exemption including but not limited to: minute order or other court record, court docket or transcript, law enforcement records, and records from the Probation Department or California Department of Corrections and Rehabilitation (CDCR).
  - Verification of court ordered trainings, classes, courses, treatment, counseling completed, or other documentation demonstrating rehabilitation.
  - Three signed, original, and current character references, including the telephone number and address where he or she can be contacted.
    - Character references must be current. The [LIC 301E](#) may be used as a guide to ensure the relevant information is captured by the person providing the reference. An individual listed as a reference on a Resource Family Application form ([RFA 01A](#)) may be the same individual

See [RFA BAG](#), page 43

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### How do you demonstrate “good character” for a Standard Exemption?

- The nature of the crime or conduct did not involve acts of violence or physical harm to another person.
- A substantial period of time has elapsed since the crime was committed or since the conduct occurred.
- The number of offenses does not indicate a longstanding pattern of criminal conduct.
- Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.
- Activities since conviction including, but not limited to, employment or participation in therapy, education or treatment, that would indicate changed behavior.
- Granting by the Governor of a full and unconditional pardon (*see RFA BAG section 118 Expungements/Pardons*).
- Character references indicating present good character.
- Must submit 3 character references.
  - A character reference that demonstrates a knowledge and understanding of the individual’s criminal background and an awareness of the individual’s changed behavior and rehabilitation shall be given more weight than those that do not demonstrate such knowledge, understanding, and awareness.
  - Failure to submit character references may result in an Exemption denial. The reviewing agency has discretion, however, to approve an Exemption when the individual submits fewer than 3 character references, provided sufficient evidence of rehabilitation exists.
- A certificate of rehabilitation from a superior court (*see RFA BAG section 112*).
- Evidence of honesty and truthfulness as revealed in the application documents and interviews.
- Evidence of honesty and truthfulness as revealed in the application interviews and conversations between the individual and the County or Department.
- The roles and responsibilities of the Resource Family and the individual’s position or relationship to the family.
- The individual’s sphere of influence in the home and potential opportunity to harm a child. Do the convictions warrant special consideration, given the relationship of the individual to the family?
  - The type of crime in relation to a child in out-of-home care.
- Conditions:
  - When an individual meets all other Exemption approval criteria, but there continue to be concerns about his/her ability to provide a particular element of care or be regularly present or reside in the home, the worker may recommend approval of the Exemption with conditions. It places a restriction or condition on a Standard Exemption which limits contact with a child in out of home care or restricts his/her role in some way. *See RFA BAG page 43-44*

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### Why would the Department deny an Exemption?

- The following factors may support a determination, but is not conclusive evidence, that an individual requiring a Criminal Record Exemption has not been rehabilitated or is not presently of “good character”:
  - False or misleading statements on forms, letters, other documents, or in conversations between the individual or others and the County or Department, in order to obtain or maintain home approval or to obtain or maintain a Criminal Record Exemption. This includes the individual’s knowing failure to fully disclose his or her criminal history or child abuse or neglect history when required to do so in application documents or interviews.
    - Evidence may include comments on the Resource Family Criminal Record Statement ([RFA 01B](#)). Failure to provide truthful statements may be grounds for an Exemption denial; however, the reviewing agency will have to prove that the person intended to deceive.
  - The individual’s statements or testimony denies or minimizes guilt or attempts to impeach a conviction.
  - The individual has not sought ongoing counseling, treatment or aftercare where such aftercare is determined to be necessary for an alcohol or substance abuse problem or has not completed education or counseling for the underlying cause of criminal behavior, such as anger management, child endangerment or negligent vehicle operation.
  - The individual has not paid full restitution or interest to a victim.
  - The individual’s statements or testimony fails to accept full responsibility for criminal conduct that resulted in a conviction, or the individual fails to express remorse.
  - The individual has a conviction within the last 5 years for fraud or theft from a government program.
  - The individual is currently on criminal probation.
    - When evaluating criminal probation, the reviewing agency may consider whether the individual successfully completed the terms of probation or parole.
    - The relevant laws do not prohibit the granting of a Criminal Record Exemption to an individual who is on criminal probation. Criminal probation is one of many factors that the reviewing agency should be considering.

See [RFA BAG](#) page 44-45

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### Appeal Remedies for Denied Exemptions



#### Will the Department issue a denial of Exemption notice?

- Yes.
- Prior to issuing a Notice of Action (NOA) ([RFA 09B](#) Notice of Action to Individual Regarding Resource Family Approval Criminal Record Exemption Decision) for denial of a Criminal Record Exemption, the reviewing agency must seek a legal consult. When a reviewing agency issues a NOA for an Exemption denial or rescission to the individual, and the denial or rescission requires an action against the resource family or applicant, the criminal history of the individual who is the subject of the Exemption decision shall not be listed in the NOA to the family or applicant. A separate NOA for denial or rescission of the approval must be sent to the family or applicant that does not include the criminal history.
  - The reviewing agency must notify the applicant or Resource Family of the denial or rescission using [RFA 09](#): Notice of Action Regarding Resource Family Approval and must concurrently notify the affected person using [RFA 09B](#): Notice of Action to Individual Regarding Resource Family Approval Criminal Record Exemption Decision.
- If an individual who resides or is regularly present in the home is denied a Criminal Record Exemption, the reviewing agency shall inform the Resource Family and the individual of the fact through separate, concurrent NOA notices. If the affected individual is no longer residing or regularly present in the home, he/she has the right to appeal the Exemption denial or rescission on his/her own behalf.

See [RFA BAG](#) page 50

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### How do you appeal an Exemption denial?

- If an individual, applicant, or Resource Family appeals a County's decision to deny a Criminal Record Exemption or to rescind an Exemption, the County shall provide due process as specified in [WIC § 16519.5](#) et seq. and Article 12. The hearing forum, Office of Administrative Hearings (OAH) or State Hearings Division (SHD), will be determined at the mandatory legal consult prior to issuing the Notice of Action.
- If a Respondent chooses to appeal an action for an application or Exemption denial, he or she shall submit a written appeal to the County address listed in the Notice of Action within ninety (90) days from the date the notice was served on the respondent.
- If a Respondent chooses to appeal an action for an Exemption rescission, exclusion order, or rescission of approval he or she shall submit a written appeal to the County or Department address listed in the [Notice of Action](#) or exclusion order within twenty-five (25) days from the date the notice was personally served on the respondent or within thirty (30) days if the notice was served on the respondent by mail.
- A Respondent may submit an appeal using an appeal form provided with the Notice of Action or exclusion order or may prepare his or her own written appeal.
- The reviewing agency shall notify the Department of Social Services in writing if it receives an appeal to a Notice of Action that included an order of exclusion.

See [RFA BAG](#) page 58



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### Index of Resources

#### Guides:

- [Alliance for Children's Rights' Resource Family Approval Guide & Toolkit](#)
- [State of California Department of Social Services' RFA Written Directives](#)
- [State of California Health and Human Services Agency's Recourse Family Approval Background Assessment Guide](#)
- [State of California Health and Human Services Agency's RFA Background Check FAQs](#)

#### WIC Codes:

- [WIC §309](#)
- [WIC §361.4](#)
- [WIC §361.45](#)
- [WIC 361.4\(a\)\(2\)](#)
- [WIC §361.4\(b\)\(3\)](#)
- [WIC §361.4\(b\)\(4\)](#)
- [WIC § 16519.5](#)

#### Health & Safety Codes:

- [HS §1522\(e\)\(1\)](#)
- [HS §1522\(g\)](#)
- [HS §1522\(g\)\(2\)\(A\)\(i-iii\)](#)
- [HS §1552\(g\)\(2\)\(B\)](#)
- [HS §1522\(g\)\(2\)\(B\)\(i-ii\)](#)
- [HS §1522\(g\)\(2\)\(D\)](#)

#### Penal Codes:

- [Penal Code §245](#)
- [Penal Code §273ab](#)
- [Penal Code §273.5](#)
- [Penal Code §273a\(b\)](#)
- [Penal Code §273a, paragraph 2 \(prior to 1994\)](#)
- [Penal Code §290](#)

#### Court Forms:

- [Resource Family Application \(RFA 01A\)](#)
- [Resource Family Criminal Record Statement \(RFA 01B\)](#)
- [Notice of Action to Individual Regarding Resource Family Approval Criminal Record Exemption Decision \(RFA 09B\)](#)
- [Notice of Action Regarding Resource Family Approval \(RFA 09\)](#)

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