



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

May 11, 2016

ALL COUNTY INFORMATION NOTICE NO. I-22-16

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL ADOPTION REGIONAL & FIELD OFFICES
ALL PRIVATE ADOPTION AGENCIES
ALL COUNTY ADOPTION OFFICES
ALL ADOPTION SERVICE PROVIDERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL FOSTER FAMILY AGENCIES

SUBJECT: RELIEF FOR CONVICTIONS ON CRIMINAL BACKGROUND
CHECKS FOR VICTIMS OF HUMAN TRAFFICKING

REFERENCE: ASSEMBLY BILL (AB) 1585; FAMILY CODE SECTIONS 8712, 8811
AND 8908; PENAL CODE SECTIONS 1203.4, 1203.49, AND 11105

This All County Information Notice (ACIN) is to apprise counties of a statutory change in the Family Code (FC) and Penal Code (PC) via passage of AB 1585 which provides relief for specific convictions on a criminal background check if the court finds the conviction was the result of the person's status as a victim of human trafficking. This legislation affects all criminal background checks pertinent to child welfare including approvals of applicants and relative caregivers for adoption, foster care, and other licensing or certifications that require background checks such as child care providers. This also includes summary criminal information provided to a tribal court or tribal child welfare agencies for the purpose of licensing foster and adoptive homes. Additionally, this impacts background checks for employment purposes as well.

Background

Human trafficking is a significant human rights problem globally and in California. There are estimates of nearly 21 million victims globally. In California, over 1,250 victims of human trafficking were identified in a recent two-year period. The number of victims

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

identified tripled and the number of perpetrators arrested doubled between 2010 and 2012 (<http://oag.ca.gov/human-trafficking/2012>). It is likely these numbers will continue to increase and it is difficult to determine the number of persons currently being trafficked in California due to the nature of the crimes. The purpose of AB 1585 is to remove potential barriers to adopting a child, providing foster care, or obtaining specified employment requiring a background check or where licensure or certification related to child welfare is required that may occur for a person whose prior victimization led to a conviction for prostitution or solicitation.

Relief for trafficking victims

Effective January 1, 2015, AB 1585 added PC section 1203.49 which allows a person who has completed any term of probation for a conviction of prostitution or solicitation, as described in subdivision (b) of Section 647, to petition the court for relief of that conviction. If the person can establish by clear and convincing evidence that the conviction resulted from being a victim of human trafficking, the court can set forth a finding that the person was a victim of human trafficking when the crime(s) was committed, order relief for that crime(s) under Section 1203.4, and notify the Department of Justice that relief has been granted for that person. This relief allows for the withholding of only prostitution or solicitation convictions from the criminal record background checks of these victims. However, an applicant must still disclose the conviction in response to a direct question related to licensure by any state or local agency.

Relevance to adoption applications

Amendments to FC section 8712, 8811, and 8908 state that the department, county adoption agency, and licensed private adoption agency may secure a person's full criminal record with the exception of any convictions for which the person was granted relief as described in the PC section 1203.49 (explained above). These amendments do not make any changes to the felony convictions that statutorily prevent the approval of a prospective adoptive parent.

For the purpose of processing and approving adoption applications, if an applicant was granted relief for a solicitation or prostitution conviction as a victim of human trafficking, there would be no listing of those convictions on the criminal record report received by the agency. Since all information on prospective adoptive applicants is important to the home study process so that the suitability of prospective adoptive parents can be properly assessed and the best match made with the appropriate child to be adopted, completing a thorough assessment of the applicant for all possible types of victimization in childhood and adolescence/young adulthood is strongly recommended as best practice. This type of history should never be used, in and of itself, as a reason to deny

approval of an applicant if the person otherwise meets approval standards. Additionally, adults who have worked through their own trauma history, often times are better able to meet the needs of a child who has experienced trauma and abuse themselves.

Relevance to child welfare

Amendments to PC section 11105 similarly remove convictions for prostitution and solicitation that have been relieved for a trafficking victim from the “state summary criminal information” record compiled by the Office of the Attorney General. These summaries are most commonly used for the purposes of employment, but additionally are used pursuant to PC 11105(b)(18) by county child welfare agencies for the purposes specified in Welfare & Institutions code (W&IC) Section 16504.5. These summaries are also used by tribal courts and tribal child welfare agencies for the purposes set forth in W&IC Section 16504.5 and for tribal approval or licensing foster care and adoptive homes per PC section 11105(b)(19) and (20).

Note that per PC section 1203.4(a)(1), which describes the conditions for granting relief, a court finding for relief does not remove the obligation for the person to disclose the conviction in response to any direct question in an application for licensure by any state or local agency. This would apply to anyone seeking approval to become a licensed foster parent.

The likelihood of an applicant having a relieved conviction related to being a victim of trafficking may be small; however, agencies and social workers need to be aware that it is a possibility when assessing prospective adoptive and foster parents.

If you have questions about the new law or this ACIN, please contact the Adoptions Policy Unit at (916) 657-1858 or apu@dss.ca.gov .

Sincerely,

Original Document Signed By:

LORI FULLER, Acting Chief
Child and Youth Permanency Branch
Children and Family Services Division