NON-EXEMPTIBLE CRIMES[1]

Revised January 1, 2019

(1) Penal Code section 37 - Treason

- Specified at Penal Code Section 667.5(c)(7)

(2) Penal Code section 128 – Perjury resulting in the execution of an innocent person

- Specified at Penal Code Section 667.5(c)(7)

(3) Penal Code Section 136.1 constituting a felony violation of Section 186.22 —Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.

- Added at Penal Code § 667.5(c)(20) by Proposition 21 effective 3-8-2000
- Must be a felony conviction for threats to victims or witnesses, as defined in PC 136.1, which would constitute a felony conviction for Penal Code Section 186.22(a): meaning the threats were gang related. Review of court records may be necessary.

(4) Penal Code Sections 187, 190-190.4 and 192(a), etc. — Any murder / attempted murder / voluntary manslaughter

- Specified at Penal Code § 667.5(c)(1) and (c)(12)
- This is not an exhaustive list of code sections under which Murder, Attempted Murder, or Voluntary Manslaughter could be charged.
- CBCB is advised to consult legal if conviction is for a similarly titled state crime committed outside of California or a federal crime.
- Exemption may be granted to subjects convicted of Murder or Voluntary Manslaughter if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii)[2]. Note that this exception is only in section 1522 and only applies to those covered under section 1522.

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1. Juveniles and young adults sentenced to CYA may be released from such disabilities under Welfare & Inst. Code Sections 1179 and/or 1772. CBCB is advised to consult CBCB legal team if this issue arises.

2. An exemption may be granted for the following violent felonies specified at Penal Code § 667.5(c)(1)Murder, Voluntary Manslaughter; (2) Mayhem; (7) any felony punishable by death or life in prison, and (8) any felony which inflicts great bodily injury) any felony in which the subject inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the subject uses a firearm which use has been charged and proved in Section 12022.5 or 12022.55, if the employee or prospective employee has been rehabilitated as provided in Penal Code Section 4852.03, has maintained the conduct required in Penal Code Section 4852.05 for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(5) Penal Code Section 203, 205, etc. — Any mayhem

- Specified at Penal Code § 667.5(c)(2)
- This is not an exhaustive list of code sections under which this crime can be charged.
- CBCB is advised to consult legal if conviction is from out of state for a similarly titled crime.
- Exemption may be granted for licensure or employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii)

(6) Penal Code Section 206 —Torture

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
- Must be a felony conviction

(7) Penal Code Sections 207, 208, 209, 209.5 — Kidnapping

- Specified in its entirety without qualification at Penal Code § 667.5(c)(14) as a result of Proposition 21, effective 3-8-2000
- A conviction for the attempt to commit 207or 209 with intent to violate Penal Code § 261, 286, 288, 288a, or 289 is non-exemptible. [3]

(8) Penal Code Sections 211, 212, 212.5, 213, 214 — Any robbery

- Specified at Penal Code § 667.5(c)(9)
- Notwithstanding the above, if a subject has been convicted of second degree robbery and has obtained a certificate of rehabilitation, they are eligible for an exemption pursuant to a Court Order issued on June 22, 2006 in Glesmann v. Rita Saenz, Director of the Department of Social Services, et al. 140 Cal App.4th, page no. 960. This exception only applies to those seeking exemptions for facilities covered under Health & Safety Code Section 1522.

3. A conviction for the attempt to commit any crime specified at Penal Code § 290(c) is non-exemptible.

(9) Penal Code Section 215 — Carjacking

- Section in its entirety without need for deadly weapon charge added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871.

- Specified in Penal Code § 667.5(c)(17) by Proposition 21 which also removes need for weapon charge effective 3-8-2000

(10) Penal Code section 218 or 219 – Train wrecking

- Specified in Penal Code section 667.5(c)(7)

(11) Penal Code Section 220 — Assault with intent to commit mayhem, rape, sodomy or oral copulation, etc.

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871, Penal Code § 290(c) and added in Penal Code § 667.5(c)(15) pursuant to Proposition 21, effective 3-8-2000

- A conviction for the attempt to commit this crime is non-exemptible except for attempted Assault with intent to commit Mayhem which is excluded in Penal Code § 290(c)

(12) Penal Code Section 236.1(b) or 236.1(c) – Human trafficking of adults or minors

- Specified in Penal Code section 290(c).

- Where the victim is a minor, a conviction for the attempt to commit this crime also is non-exemptible.

(13) Penal Code Section 243.4 — Sexual battery

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871, and Penal Code § 290(c)

- A conviction for the attempt to commit this crime is non-exemptible

(14) Penal Code Section 261(a)(1)(2)(3)(4) or (6) — Rape

- Specified in Penal Code § 290(c)

- A conviction for the attempt of this crime is non-exemptible

(15) <u>Penal Code Section 262(a)(1) or (4) — Rape of spouse</u>

- Specified in Penal Code § 667.5(c)(3)
- Penal Code § 262(a)(1) is specified in Penal Code § 290(c), which requires use of violence or force for which person was sentenced to state prison
- A conviction for the attempt to commit a violation of Penal Code § 262(a)(1) is non-exemptible. CBCB is advised to consult CBCB legal team.

(16) <u>Penal Code Section 264.1 — Rape in concert</u>

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871, and in Penal Code Sections 290(c) and 667.5(c)(18) by Proposition 21 effective 3-8-2000
- A conviction for the attempt to commit this crime is non-exemptible

(17) <u>Penal Code Section 266 — Enticing minor into prostitution</u>

- Specified in Penal Code § 290(c) including all Penal Code § 266 sections below. Therefore, a conviction for the attempt to commit any of the Penal Code § 266 violations listed below is non-exemptible.

(18) <u>Penal Code Section 266c — Induce to sexual intercourse, etc. by fear or consent through fraud</u>

(19) <u>Penal Code Section 266h(b) — Pimping a minor</u>

(20) <u>Penal Code Section 266i(b) — Pandering a minor</u>

(21) <u>Penal Code Section 266j — Providing a minor under 16 for lewd or lascivious act</u>

(22) <u>Penal Code Section 267 — Abduction for prostitution</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(23) <u>Penal Code Section 269 — Aggravated assault of a child</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(24) <u>Penal Code Section 272 — Contributing to delinquency of a minor</u>

- Specified in Penal Code § 290(c)
- Must involve lewd or lascivious conduct
- A conviction for the attempt to commit this crime is non-exemptible

(25) <u>Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] — Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death</u>

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
- Conviction of Penal Code § 273a before 1-1-65 is exemptible

(26) <u>Penal Code Section 273ab – Assault of a child 8 years or younger</u>

- Specified in its entirety. Conviction for using force likely to produce great bodily injury and that resulted in the child's death, in the child becoming comatose, or in the child suffering permanent paralysis.

(27) <u>Penal Code Section 273d — Willfully inflicting any cruel or inhuman corporal punishment or injury on a child</u>

- Specified in Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871
- "Spousal abuse" deleted by 1977 amendment
- If conviction was prior to 1978 then it must be for child abuse and not spousal abuse

(28) <u>Penal Code Section 285 — Incest</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt of this crime is non-exemptible

(29) <u>Penal Code Section 286 — Sodomy</u>

- Specified in Penal Code § 290(c) and "By force" in Penal Code § 667.5(c)(4)
- NOTE: Need not be "By force" to be non-exemptible per Penal Code § 290(a)(2)(A)
- A conviction for the attempt of this crime is non-exemptible
- Rewritten by 1975 amendment which removed the far-reaching "Infamous crime against nature" language? Prior to amendment the section could be read to prohibit the act between consenting adults. Penal Code § 290(a)(2)(A)(F)(i) sets forth procedure by which a subject can establish such acts were decriminalized by 1975 or 1976 legislation. CBCB is advised to consult CBCB legal team if conviction is on or before 1-1-76.

(30) <u>Penal Code Section 287 [or 288a if the conviction was prior to January 1, 2019] — Oral copulation</u>

- Specified at Penal Code § 290(c) and "By Force" at Penal Code § 667.5(c)(5)
- NOTE: Need not be "By force" to be non-exemptible per Penal Code § 290(c)
- Rewritten by 1975 amendment, which removed far-reaching language. Prior to this amendment the section could be read to prohibit the act between consenting adults. Penal Code § 290(a)(2)(A)(F)(i) sets forth procedure by which a subject can establish such acts were decriminalized by 1975 or 1976 legislation. CBCB is advised consult CBCB legal team if the conviction is on or before 1-1-76.

(31) <u>Penal Code Section 288 — Lewd or lascivious act upon a child under 14</u>

- Specified in Penal Code § 290(c), Penal Code § 667.5(c)(6), and Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871
- A conviction for the attempt to commit this crime is non-exemptible

(32) <u>Penal Code Section 288.2 — Distributing lewd material to children</u>

- Specified in Penal Code § 290(c) by amendment effective 1-1-90
- Must be a felony conviction
- A conviction for the attempt to commit this crime is non-exemptible
- CBCB is advised to consult CBCB legal team if conviction before 1-1-90

(33) <u>Penal Code section 288.3 – Contact with minor to commit sexual offense</u>

- Specified in Penal Code § 290(c) by amendment effective 9-20-06
- A conviction for the attempt to commit this crime is non-exemptible

(34) <u>Penal Code section 288.4 – Meeting with a minor for sexual purpose</u>

- Specified in Penal Code § 290(c) by initiative effective 11-7-06
- A conviction for the attempt to commit this crime is non-exemptible

(35) <u>Penal Code Section 288.5 — Continuous sexual abuse of a child</u>

- Specified in Penal Code § 290(c) by amendment effective 1-1-90 and at Penal Code § 667.5(c)(16) by amendment effective 1-1-92
- A conviction for the attempt to commit this crime is non-exemptible

(36) <u>Penal Code Section 288.7 — Sexual conduct with a child 10 years or younger</u>

- Specified in Penal Code, § 290(c) by amendment effective 9-20-06
- A conviction for the attempt to commit this crime is non-exemptible

(37) <u>Penal Code Section 289 — Genital or anal penetration by foreign object</u>

- Penal Code § 289 is specified in Penal Code § 290(c) and Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.971
- A conviction for the attempt to commit this crime is non-exemptible
- 1993-94 amendment repealed former Penal Code § 289.5—relating to punishment for rape or sodomy whether penetration by foreign object or penis-- and included it in Penal Code § 289. CBCB is advised to consult legal if conviction is for Penal Code § 289.5

(38) <u>Offenses listed in Penal Code Section 290(c) — Registration of sex offenders (all such offenses are included in this list)</u>

- Specified at Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871
- If person is noted on the rap sheet as required to register as a sex offender and the conviction for which registration is required is not listed on the rap sheet then contact DOJ Sex Registration Unit ASAP to get crime. It is the crime listed at 290(c) which is non-exemptible, not the requirement to register. Nevertheless, CBCB is advised to consult legal if the underlying crime is exemptible (not listed at 290(c)) but the subject was ordered by court to register as a sex offender anyway. (See Penal Code § 290.006).
- Penal Code Sections 288.2 and 288.5 added to list of offenses requiring registration by amendment effective 1-1-90

(39) <u>Penal Code Section 311.1 — Sent or brought into state for possession, or distribution: child-related pornography</u>

- Added by amendment to Penal Code § 290(c), effective 1-1-04
- A conviction for the attempt to commit this crime is non-exemptible

(40) <u>Penal Code Section 311.2(b), (c) or (d) — Sending or bringing into state, possessing for distribution: child-related pornography</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(41) <u>Penal Code Section 311.3 — Sexual exploitation of a child</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(42) <u>Penal Code Section 311.4 — Using a minor to assist in making or distributing child pornography</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(43) <u>Penal Code Section 311.10 — Advertising or distributing child pornography</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(44) <u>Penal Code Section 311.11 — Possessing child pornography</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(45) <u>Penal Code Section 314(1) or (2) — Lewd or obscene exposure of private parts</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(46) <u>Penal Code Section 347(a) — Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, or reservoir</u>

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
- Must be a felony conviction

(47) <u>Penal Code Section 368 — Elder or dependent adult abuse</u>

- SB 1992, effective 1-1-2001, specifies Penal Code § 368 in its entirety.
- Formerly Penal Code § 368(a) or (b) if prior to 1-1-99, and (b) or (c) thereafter as specified at Health & Safety Code Sections 1522, 1568.09, 1569.17, and 1596.871

(48) <u>Penal Code Section 417(b) — Drawing, exhibiting, or using firearm or deadly weapon on the grounds of a day care center</u>

- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1569.17 and 1596.871
- Must be a felony conviction

(49) <u>Penal Code Section 451(a) — Arson with great bodily injury</u>

- A felony violation of Penal Code § 451(a) specified at Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871
- Also specified at Penal Code § 667.5(c)(10)

(50) <u>Penal Code Section 451(b) — Arson of inhabited structure or property</u>

- A felony violation of Penal Code § 451(b) specified ONLY at Health & Safety Code Section 1596.871(f)(1)(B).
- Applies only to facilities covered under Health & Safety Code Section 1596.871 (Family Child Care Homes, Child Care Centers and TrustLine).

(51) <u>Penal Code Sections 518 with 186.22 — Extortion/gang related</u>

- Added by Proposition 21, effective 3-8-2000, at Penal Code § 667.5(19)
- Must be a felony conviction for extortion, as defined in Penal Code Section 518, with a sentencing enhancement under Penal Code Section 186.22(b) (gang related) or a felony conviction for Penal Code Section 186.22(a) (gang related). Review of court records may be necessary to determine enhancement (gang-related conduct)

(52) <u>Penal Code Section 647.6 [or prior to 1987 former section 647a] — Annoy, molest child under 18</u>

- Specified in Penal Code § 290(c)
- A conviction for the attempt to commit this crime is non-exemptible

(53) <u>Penal Code Section 653f(c) — Solicit another to commit rape, sodomy etc.</u>

- Specified in Penal Code § 290(c)
- CBCB is advised to consult CBCB legal team if conviction under 653f(c) is prior to January 1, 1980.
- A conviction for the attempt to commit this crime is non-exemptible

(54) <u>Penal Code Section 664/187 — Any attempted murder</u>

- Specified in Penal Code § 667.5(c)(12)
- CBCB is advised to consult CBCB legal team if conviction is from out of state for similar crime.

(55) **Penal Code Section 667.5(c)(7)[4] — Any felony punishable by death or imprisonment in the state prison for life without possibility of parole but not for an indeterminate sentence.**

- An example of an indeterminate sentence is "5 years to life" or "life in prison with possibility of parole."
- Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii) if the underlying felony can be exempted.

(56) **Penal Code Section 667.5(c)(8) — Enhancement for any felony which inflicts great bodily injury**

- On or after 7-1-77, felony must have been charged and proved as provided for in Penal Code § 12022.7 or §12022.9. Prior to 7-1-77, as specified in Penal Code §§ 213, 264, and 461 or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Penal Code § 12022.5 or § 12022.55
- Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code Section 1522(g)(1)(A)(ii) if the underlying felony can be exempted

(57) **Penal Code Sections 18745, 18750, or 18755 [or 12308, 12309, or 12310 if the conviction was prior to January 1, 2012] — Exploding or igniting or attempting to explode or ignite any destructive device or explosive with the intent to commit murder**

- These sections are specified in Penal Code section 667.5(c)(13).
- These code sections were renumbered as a result of legislation initiated in 2010 by the California Law Revision Commission, Senate Bill 1080. The new code sections took effect January 1, 2012.

(58) **Penal Code Section 12022.53 — Enhanced sentence for listed felonies where use of firearm**

- Specified in Penal Code § 667.5(c)(22) by Proposition 21, effective 3-8-2000
- Underlying conviction must be for a felony listed in Penal Code §12022.53
- Some subsections of Penal Code § 261 and § 262 are exemptible

4. If any Penal Code § 667.5(c) entry appears on rap sheet alone without any other Penal Code section violation then CBCB is advised to contact legal.

(59) **<u>Penal Code Section 11418(b)(1) or (b)(2) — Weapons of mass destruction</u>**

- Added by amendment effective 9-17-02, in Penal Code § 667.5(c)(23)

(60) **<u>Business & Professions Code Section 729 — Sexual exploitation by physicians, surgeons, psychotherapists, or alcohol and drug abuse counselors</u>**

- Must be felony conviction
- Added by SB 1992, effective 1-1-2001, as an amendment to Health & Safety Code Sections 1522, 1568.09, 1569.17 and 1596.871

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If the person is associated to a foster family home or a certified family home the Federal Non-Exemptible Crimes (Evaluator Manual Section 7-2110) must also be considered. Current law prohibits granting a criminal record exemption to an individual associated to a foster or certified family home who has been convicted of a crime identified in Section 7-2110.

If the person is associated to a foster family home or a certified family home, the crimes listed under the Federal 5-year Ban List (Evaluator Manual Section 7-2115) must also be considered. Current law prohibits granting a criminal record exemption to an individual associated to a foster or certified family home who has been convicted of a federal 5-year ban crime (see Evaluator Manual Section 7-2115) within the past five years.