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DEPARTMENT OF SOCIAL SERVICES

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ARNOLD SCHWARZENEGGER
GOVERNOR

October 23, 2008

ALL COUNTY LETTER NO. 08-46

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY LICENSING AGENCIES
ALL CHIEF PROBATION OFFICERS

SUBJECT: AB 2651 (CHAPTER 701, STATUTES OF 2008) FEDERAL NON-EXEMPTIBLE
AND FEDERAL FIVE YEAR BAN CRIMINAL CONVICTIONS

REASON FOR THIS TRANSMITTAL

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

This letter addresses the implementation of Assembly Bill (AB) 2651 effective October 1, 2008 as it pertains to prospective foster and certified parents, relatives and Non-relative Extended Family Members (NREFM). The California Department of Social Services will distribute a separate All County Letter addressing AB 2651's application to prospective adoptive parents. The law also applies to all adults who are not specifically exempted from the fingerprint requirements (see Health and Safety Code section 1522(b); Welfare and Institutions Code section 361.4).

AB 2651 amends Health and Safety Code section 1522, to comply with the criminal record background check requirements of the Adam Walsh Child Protection and Safety Act of 2006. The Act was designed to increase the safety of children. To ensure federal compliance, additional non-exemptible offense categories have been added to state law at Health and Safety Code section 1522(g)(1)(C). These new non-exemptible crime categories will be in addition to the current state list of non-exemptible crimes.

FEDERAL NON-EXEMPTIBLE CRIMES

Health and Safety Code section 1522(g)(1)(C)(i) now prohibits, for life, the granting of a criminal record exemption for a crime that matches one of the following criminal categories:

- Felony child abuse or neglect
- Felony spousal abuse
- Felony crime against a child, including child pornography
- Felony crime involving violence, meaning any violent crime listed in Health and Safety Code section 1522(g)(1)(A)(i) or 1522(g)(1)(B)

The attached list provides guidance as to which crimes are likely to be federal non-exemptible crimes.

FEDERAL FIVE YEAR BAN CRIMES

Health and Safety Code section 1522(g)(1)(C)(ii) now prohibits granting a criminal record exemption for a crime that matches one of the following criminal categories if the conviction occurred within the last five (5) years:

- Felony physical assault
- Felony battery
- Felony drug or alcohol-related offense

The attached list provides guidance as to which crimes are likely to be five year ban crimes.

Effective October 1, 2008, before licensing a home or finally approving a placement, all criminal record background checks processed by County Licensing and County Welfare Agencies for foster family homes, adoptive homes, relatives, NREFM and all other adults not specifically exempted from the fingerprint requirements must adhere to the above changes in the law.

Application

The decision maker should analyze a particular criminal conviction as follows to determine if the person was convicted of a non-exemptible crime under the state or federal criteria:

1. Determine if the crime for which the individual was convicted is on the state non-exemptible list. *
2. If the crime is not on the state list, determine if it is a felony. If it is a felony conviction, continue to the federal lists of crimes.
3. Use the federal lists to determine if the felony crime is a federal non-exemptible crime or a federal five year ban crime. **
4. Consult your state attorney or county counsel if you have questions.

* Crimes on the state non-exemptible list remain non-exemptible.

**Crimes on the federal non-exemptible and federal five year ban lists may, upon appeal, be reviewed by an Administrative Law Judge (ALJ) or Grievance Official to determine if they meet the new statutory language in Health and Safety Code section 1522(g)(1)(C). Should an ALJ or Grievance Official find that a listed crime does not meet the statutory language, consult your state legal representative. These lists should be used as guidance to examine a particular criminal conviction to determine if the conviction and the facts admitted or found true meet the language at Health and Safety Code section 1522(g)(1)(C).

As indicated above, the new law applies to prospective foster and certified parents, prospective adoptive parents, prospective relative and NREFM caregivers who are licensed or finally approved on or after October 1, 2008. This law also applies to all other adults who are not specifically exempted from the fingerprint requirements (see Health and Safety Code section 1522(b) and Welfare and Institutions Code section 361.4).

Pursuant to Health and Safety Code section 1522(g)(1)(C)(iii), these amendments shall not apply to licenses or approvals wherein a caregiver was granted a criminal record exemption before October 1, 2008. Existing care providers will not be required to be live scanned again at the time of the annual visit/re-approval under these amendments, as they are already subject to subsequent arrest notification provisions. However, if a new adult moves into an existing care provider's home, that adult will be subject to these amendments. Existing care providers who move will not be affected by these amendments because an existing license, certification, or approval may now be transferred to a new location without triggering the reevaluation of a previously granted exemption for one of these new crimes. Nevertheless, if one of these adults is subsequently convicted of a federal non-exemptible or federal five year ban crime, the license, certification, or exemption must be revoked, approval rescinded and/or child removed from placement. The Evaluator Manual will be updated to incorporate these changes.

If you should have any questions regarding this All County Letter, you can contact Mariahelena Romo, Manager of Caregiver Background Check Bureau at (916) 274-6200 or you can contact Karen Gunderson, Chief of the Child and Youth Permanency Branch at (916) 651-7464.

Sincerely,

Original signed by Jo Frederick

JO FREDERICK
Deputy Director
Community Care Licensing Division

Original signed by Gregory E. Rose

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: CWDA
Chief Probation Officer of CA

Attachment

AB 2651 (2008)

Federal Non-Exemptible and Federal Five Year Ban Crimes Lists

Introduction

These lists address the state implementation of the federal Adam Walsh Child Protection and Safety Act of 2006. Assembly Bill (AB) 2651, effective October 1, 2008, allows California to implement the federal requirements. These amendments will apply to foster family homes and certified family homes, adoptive parents as well as to relative and Non-relative Extended Family Members (NREFM) by incorporation of the licensing standards. The law also applies to adults residing or providing care in these homes that are not specifically exempted from the fingerprint requirements (see Health and Safety Code section 1522(b); Welfare and Institutions Code 361.4).

The new changes to Health and Safety Code section 1522(g)(1)(C) include two categories of crimes for which an exemption may not be granted under the federal law. These new crimes will be in addition to the state's existing non-exemptible crimes found at Health and Safety Code section 1522(g)(1)(A)(i) and 1522(g)(1)(B). Crimes on the state Non-exemptible crimes list remain non-exemptible. These new crimes include federal non-exemptible crimes as well as federal five (5) year ban crimes.

FEDERAL NON-EXEMPTIBLE CRIMES LIST

Health and Safety Code section 1522(g)(1)(C):

“Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant or any other person specified in [Health and Safety Code section 1522] subdivision (b) in those homes, has a felony conviction for either of the following offenses:

- (i) A felony conviction for **child abuse or neglect**, **spousal abuse**, **crimes against a child (including child pornography)**, or for a **crime involving violence**, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subparagraph, a crime involving violence means any violent crime specified in clause (i) of subparagraph (A) or subparagraph (B).”

These are the state non-exemptible crimes located at Health and Safety Code section 1522(g)(1)(A)(i) or 1522(g)(1)(B).

Felony convictions for “child abuse or neglect:”

No additional crimes for this category as the state's existing non-exemptible crimes list covers these crimes.

Felony convictions for “spousal abuse:”

Penal Code (PC) section 166(c)(4) (violation of domestic violence protective order by violence or threat of violence) *If against a spouse.
PC section 262(a)(2) (Rape of spouse-by intoxication)
PC section 262(a)(3) (Rape of spouse-victim unconscious)
PC section 262(a)(5) (Rape of spouse-threat to use authority)
PC section 266g (Placing wife in house of prostitution against her will)
PC section 273.4 (Female genital mutilation) *If against a spouse.
PC section 273.5 (Willful infliction of corporal injury) *If against spouse.
PC section 646.9 (Stalking) *If against spouse.

Felony convictions for “crimes against a child (including child pornography):”

PC section 157 (Substitute one child for another to deceive)
PC section 270 (Failure to provide after final adjudication)
PC section 271 (Desert/abandon child under 14)
PC section 271a (Abandonment of child...false misrep as orphan)
PC section 272 (Contributing to the delinquency of a minor)
PC section 273ab (Assault resulting in death of child under 8)
PC section 278 (Child stealing)
PC section 278.5(a) (Maliciously deprive custody of child)
PC section 280(b) (Conceal child from adoption proceedings)
PC section 313.1(a) and (b) (Harmful/patently offensive matter to children)
PC section 12303.2 (Reckless possession of destructive device or explosive in public area near theatre, school etc...)
PC section 278 (Unlawfully detain child from legal custodian)
PC section 278.5 (Deprivation of custody or visitation)
PC section 280 (Removal of child from county of adoption)
PC section 626.9 (Possess or discharge firearm in or within 1000 feet of a gun free K-12 school zone)
PC section 626.10(a) (Possessing weapon at K-12 school)
PC section 626.95 (Firearm at playground or youth center)
PC section 646.9 (Stalking vs. child)
PC section 653j (Solicit child to commit serious specified felony)
PC section 1001.5 (Alcohol at Youth Authority)
PC section 12072(a)(3)(a) (Sell firearm to a minor)
Business and Profession (BP) section 4336(a) (Dangerous drug by minor as agent)
Health and Safety (HS) 11353 (Induce, use or employ minor to violate drug provision)
HS section 11353.5 (Controlled substance given or sold to minor)
HS section 11353.7 (Controlled substance given or sold to minor in park)
HS section 11354(a) (Minor induce, use or employ minor to violate drug provision)
HS section 11361(a) (Sell Marijuana to minor in park)
HS section 11361(b) (Furnish Marijuana to minor in park)
HS section 11371 (Induce minor to prescription violation)
HS section 11371.1 (Induce minor to violated provision of drug education by use or

possession of controlled substance)
HS section 11379.7 (Manufacturing meth, etc. where child present)
HS section 11380 (Minor induce, use or employ minor to violate drug provision)

Felony conviction for “crimes involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery:”

AB 2651 defined these crimes to only include those violent offenses listed on the state’s non-exempt crimes list. An exemption may not be granted for any crime on the state’s non-exemptible crimes list.

FEDERAL FIVE (5) YEAR BAN CRIMES LIST

Health and Safety Code section 1522(g)(1)(C):

“Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant or any other person specified in subdivision [Health and Safety Code section 1522] (b) in those homes, has a felony conviction for either of the following offenses:

- (i) ...
- (ii) A felony conviction, within the last five years, for **physical assault, battery, or drug or alcohol-related offense.**”

Felony conviction, within the last five years, for “physical assault or battery:”

PC section 69 (Obstruct / resist and executive officer by force or violence – also includes resisting by threat)
PC section 136.1(c)(1) (Intimidate witness by force, or threat of force or violence)
PC section 136.7(b) (Influence testimony by force or threat of force)
PC section 137(b) (Influence testimony by force or threat of force)
PC section 139(a) (Threat of force upon witness)
PC section 140(a) (Use of or threat of force upon witness)
PC section 148.10(a) (Resist officer resulting in death of officer)
PC section 149 (Unlawful assault / beating by public officer)
PC section 186.26(c) (Recruiting criminal street gang member by use of physical violence)
PC section 192(c)(3) (Vehicular manslaughter – accident knowingly caused for financial gain resulting in death)
PC section 210.5 (Hostage – using person as a shield)
PC section 217.1(a) (Assault public official)
PC section 218 (Attempted train wrecking)
PC section 219.1 (Throwing missile at common carrier vehicle)
PC section 219.2 (Throwing hard substance at train)
PC section 236/237 (False imprisonment by force or violence)
PC section 236.1 (Human trafficking by force or violence)

PC section 241.1 (Assault against custodial officer)
PC section 241.4 (Assault against school peace officer)
PC section 241.7 (Assault against juror)
PC section 242 (Battery)
PC section 243(c)(1) (Battery against custodial officer...)
PC section 243(c)(2) (Battery against peace officer)
PC section 243(d) (Battery causing serious bodily injury)
PC section 243.1 (Battery against a custodial officer)
PC section 243.3 (Battery against transportation worker or passenger)
PC section 243.6 (Battery against school employee with injuries)
PC section 243.7 (Battery against juror)
PC section 243.9 (Aggravated battery - gassing)
PC section 244 (Assault w/ caustic chemicals)
PC section 244.5 (Assault w/ stun gun or taser)
PC section 245(a)(1) (Assault w/ deadly weapon)
PC section 245(a)(2) (ADW-firearm)
PC section 245(a)(3) (ADW-machinegun)
PC section 245(b) (ADW-semiautomatic firearm)
PC section 245(c) (ADW-upon peace officer or firefighter)
PC section 245(d)(1) (ADW-firearm upon peace officer or firefighter)
PC section 245(d)(2) (ADW-semiautomatic firearm upon officer)
PC section 245(d)(3) (ADW-machinegun upon officer...)
PC section 245.2 (ADW-driver of cab, bus,...)
PC section 245.3 (ADW- custodial officer...)
PC section 245.5 (ADW- school employee)
PC section 245.6(d) (Hazing resulting in death or SBI)
PC section 246 (Shooting into inhabited or occupied dwelling, auto, aircraft, etc)
PC section 247.5 (Discharge of laser at occupied aircraft)
PC section 261(a)(5) (Rape-victim submits under induced belief that perpetrator is spouse)
PC section 261(a)(7) (Rape-by threat to use official authority)
PC section 261.5 (Unlawful sexual intercourse with a minor – felony violation if victim is 3+ years younger or Perpetrator is 21+ and victim is under 16)
PC section 265 (Abduction for marriage by force)
PC section 266a (Abduction person against will for prostitution)
PC section 266b (Abduction person against will for illicit relation)
PC section 266i(a) (Pandering by threat or violence)
PC section 273.4 (Female genital mutilation)
PC section 273.5 (Willful infliction of corporal injury) * Other than spouse
PC section 375(d) (Unlawful use gas, acid or explosive upon public group)
PC section 405a (Lynching)
PC section 417(c) (Drawing or exhibiting firearm in threatening manner to Peace Officer)
PC section 417.3 (Drawing or exhibiting firearm in threatening manner to Vehicle Occupant)
PC section 417.6(a) (SBI results during 417 or 417.8)
PC section 417.8 (Drawing or exhibiting firearm with to resist arrest)
PC section 520 (Extortion by force or threat of force)

PC section 587.1(b) (Maliciously moving train creating a substantial likelihood of SBI or death to another)
PC section 653f(a) (Solicitation of carjacking, robbery...)
PC section 653f(b) (Solicitation of murder)
PC section 836.6 (Escape police) * If by force
PC section 4011.7 (Escape hospital) * If by force
PC section 4131.5 (Battery in jail)
PC section 4501 (ADW by prisoner)
PC section 4501.1 (Aggravated battery by prisoner – gassing)
PC section 4501.5 (Battery by prisoner)
PC section 4503 (Hostage by prisoner) * If by force
PC section 4530(a) (Escape prison by force)
PC section 4532(a)(2) (Escape jail/prison by force)
PC section 11413 (Terrorism by use of destructive device)
PC section 11418.1 (False WMD that causes fear)
PC section 11418.5 (Threat to use WMD)
PC section 11419 (Possession of restricted biological agents)
PC section 12303 (Possession of destructive device)
PC section 12303.1 (Explosive device on vehicle, vessel, aircraft, etc)
PC section 12308 (Exploding destructive device w/ intent to murder)
PC section 12309 (Exploding destructive device causing injury)
PC section 12310(a) (Exploding destructive device causing death)
PC section 12310(b) (Exploding destructive device causing mayhem)
PC section 12355(a) (Placing booby trap)
Welfare and Institutions Code (WI) section 871(b) (Minor escape custody) * If by force
WI section 1768.7 (Minor escape custody) * If by force
WI section 1768.8 (Assault/battery on person in CYA)
WI section 1768.85 (Battery by gassing on person in CYA)
Vehicle Code (VC) section 2800.3 (Death/SBI caused by flight from officer)
VC section 23110(b) (Throw substance on highway with GBI intent)
VC section 38318(b) (Throw substance at OHV with GBI intent)

Felony conviction, within the last five years, for “drug and alcohol-related offense:”

BP section 4060 (Cont. sub. without a prescription)
BP section 4324 (Forgery of prescription)
BP section 25603 (Bring liquor into prison)
Harbors and Navigation section 655(f) (Watercraft under the influence causing injury)
HS section 11104(a) (Furnish cont. sub. for manufacturing)
HS section 11106(j) (Sell cont. sub. without permit)
HS section 11152 (Nonconforming prescription)
HS section 11153(a) (Cont. sub. prescription for unlawful purpose)
HS section 11154 (Unlawful prescription)

HS section 11155 (Illegal cont. sub. prescription)
HS section 11156 (Give cont. sub. to addict)
HS section 11157 (False prescription)
HS section 11162.5(a) (Counterfeit prescription)
HS section 11166 (Fill old, forged or altered prescription)
HS section 11173 (Obtain cont. sub. by fraud)
HS section 11174 (False name to obtain cont. sub.)
HS section 11350 (Possession of cont. sub.)
HS section 11351 (Possession cont. sub. for sale)
HS section 11351.5 (Possession of cocaine base for sale)
HS section 11352 (Sell or transport of cont. sub. into state or country)
HS section 11355 (Sale of substance falsely represented to be cont. sub.)
HS section 11357(a) (Possession of concentrated cannabis)
HS section 11358 (Planting, cultivating, harvesting Marijuana)
HS section 11359 (Possession of Marijuana for sale)
HS section 11360(a) (Transport over 28.5 grams of Marijuana into state)
HS section 11363 (Cultivation of Peyote)
HS section 11364.7(b) (Manufacturing or furnishing drug paraphernalia)
HS section 11366 (Maintaining a place for sale of cont. sub.)
HS section 11366.5 (Provide a place for manufacture or sale of cont. sub.)
HS section 11366.6 (Using space designed to suppress police entry)
HS section 11366.7(b) (Sale of chemical, drug or device to make cont. sub.)
HS section 11366.8 (False compartment to conceal cont. sub.)
HS section 11368 (Forging a drug prescription)
HS section 11370.1 (Possess of cont. sub. while armed with a firearm)
HS section 11370.6(a) (Possession of over \$100,000 from sale of cont. sub.)
HS section 11370.9 (Possession of over \$25,000 from sale of cont. sub.)
HS section 11374.5 (Manufacture of cont. sub., disposal of hazardous by-products)
HS section 11375(b) (Possession for sale of cont. sub.)
HS section 11377(a) (Unauthorized possession of cont. sub.)
HS section 11378 (Possession for Sale)
HS section 11378.5 (Possession for sale, including Phencyclidine...)
HS section 11379(b) (Transport cont. sub. into state or country for sale)
HS section 11379.2 (Possession for sale of Ketamine)
HS section 11379.5 (Transportation for sale, Phencyclidine: PCP)
HS section 11379.6 (Manufacturing cont. sub.)
HS section 11382 (Sale of falsely represented substances)
HS section 11383 (Possession of... w/intent to manufacture PCP)
HS section 11383.5 (Possession of... w/intent to manufacture Meth)
HS section 11383.6 (Possession of chemicals to make PCP w/intent to sell to manufacturer)
HS section 11383.7 (Possession of chemicals to make meth w/intent to sell to manufacturer)
HS section 11390 (Cultivation of mushrooms)
HS section 11391 (Transport of mushrooms into state)
HS section 11550(e) (Under the influence of Cocaine, Heroin, Meth or PCP with loaded firearm)
PC section 191.5(a) (Gross vehicular manslaughter: intoxicated)

PC section 222 (Administering drugs to assist in commission of crime)
PC section 382.5 (Dinitrophenol for human consumption – banned diet drug)
PC section 1001.5 (Alcohol at Youth Authority)
PC section 2772 (Interfere with prison work) * If by cont. sub. or alcohol
PC section 2790 (Interfere with prison work) * If by cont. sub. or alcohol
PC section 4573 (Bring cont. sub to jail)
PC section 4573.5 (Bring alcohol or drugs to prison)
PC section 4573.6 (Possession of cont. sub. in jail or prison)
PC section 4573.8 (Possession of cont. sub. in jail or prison)
PC section 4573.9 (Sell cont. sub. in jail or prison)
VC section 23153 (DUI w bodily injury)
VC section 23175 (DUI with prior specified convictions)
VC section 23175.5 (DUI within 10 yrs of prior felony DUI)
VC section 23550(a) (DUI with prior specified convictions)
VC section 23550.5(a) (DUI within 10 years of prior felony DUI)
VC section 23550.5(b) (DUI with prior vehicular manslaughter)

APPLICATION

The decision maker should analyze a particular criminal conviction as follows to determine if the individual was convicted of a non-exemptible crime under the state or federal criteria:

1. Determine if the crime for which the individual was convicted is on the state non-exemptible list. *
2. If the crime is not on the state list, determine if it is a felony. If it is a felony conviction, continue to the federal lists of crimes.
3. Use the federal lists to determine if the felony crime is a federal non-exemptible crime or a federal five (5) year ban crime. **
4. Consult your state attorney or county counsel if you have questions.

* Crimes on the State Non-exemptible crimes list remain non-exemptible.

**Crimes on the federal non-exemptible and federal five (5) year ban crimes lists may, upon appeal, be reviewed by an Administrative Law Judge (ALJ) or Grievance Official to determine if they meet the new statutory language in Health and Safety Code section 1522(g)(1)(C). Should an ALJ or Grievance Official find that a listed crime does not meet the statutory language, please inform your state legal representative. These lists should be used as guidance to examine a particular criminal conviction to determine if the conviction and the facts admitted or found true meet the language at Health and Safety Code section 1522(g)(1)(C).