

### Non-Exemptible Crime List

<b>Under no circumstances shall a child be allowed to remain in the home or will an exemption be granted (in order to approve the home) if the prospective caregiver or anyone residing in his or her home has been convicted of any of the following crimes.</b>	
<b>Crime</b>	<b>Penal Code Section</b>
Treason	37 as specified in 667.5.(c)(7)
Perjury resulting in the execution of an innocent person	128 as specified in 667.5.(c)(7)
Substitute one child for another to deceive	157
Violation of domestic violence protective order by violence or threat of violence, if against spouse	166(c)(4)
Gang related/Intimidation of witness or victims (felony conviction)	186.22 and 136.1
Any murder/Attempted murder/Voluntary manslaughter	187, 190 through 190.4 and 192(a) as specified in 667.5.(c)(1) and (c)(12)
Any mayhem	203 and 205 as specified in 667.5.(c)(2)
Felony torture	206
Kidnapping	207, 208, 209, 209.5
Attempted Kidnapping	207 or 209 with intent to violate Penal Code 261, 286, 288, 288a, or 289
Car-jacking	215
Train wrecking	218 and 219 as specified in 667.5(c)(7)
Sexual Battery	243.4
Attempted Sexual Battery	243.4
Rape	261(a)(1), (2), (3), (4) or (6)
Rape of a spouse	262(a)(1), (2), (3), (4) or (5)
Attempted rape of a spouse	262(a)(1)
Rape in concert	264.1
Enticing a minor into prostitution	266
Induce to sexual intercourse, etc. by fear or consent through fraud	266c
Pimping a minor	266h(b)
Pandering a minor	266i(b)
Providing a minor under 16 for lewd or lascivious act.	266j
Placing wife in house of prostitution against her will	266g
Abduction for prostitution	267
Aggravated assault of a child	269
Failure to provide after final adjudication	270
Desert/abandon child under 14	271
Abandonment of child...false misrepresent as orphan	271a
Contributing to the delinquency of a minor (must involve lewd or lascivious conduct)	272
Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.	273a(a) [or 273a(1) if the conviction was prior to January 1, 1994]

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<b>Crime</b>	<b>Penal Code Section</b>
Assault resulting in death of child under 8	273ab
Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.	273d
Female genital mutilation, against a spouse.	273.4
Willful infliction of corporal injury, against a spouse	273.5
Child stealing/ Unlawfully detain child from legal custodian	278
Maliciously deprive custody of child/ Deprivation of custody or visitation	278.5(a), 278.5
Removal of child from county of adoption	280
Conceal child from adoption proceedings	280(b)
Incest	285
Sodomy	286
Lewd or lascivious act upon child under 14	288,
Oral copulation	288a
Felony conviction for distributing lewd material to children.	288.2
Contact with a minor with the intent to commit a sexual offence	288.3, 288.4
Continuous sexual abuse of a child	288.5
Sexual intercourse or sodomy with a child 10 years of age or younger; oral copulation or sexual penetration of a child 10 years of age or younger	288.7
Genital or anal penetration or abuse by a foreign or unknown object	289
Attempted murder in perpetration or attempted rape	As specified in 290(c)
Attempted sodomy	As specified in 290(c), 286
All crimes for which one must register as a sex offender including attempts and not guilty by insanity.	290(c)
Attempted lewd or lascivious act upon child under 14	290(c), 288
Attempted genital or anal penetration or abuse by a foreign or unknown object	290(c), 289
Attempted Genital or anal penetration or abuse by a foreign or unknown object	290(c), 289
Attempted assault with intent to commit, rape, sodomy, or oral copulation	290(c), 220
Sent or brought into state for possession, or distribution: child-related pornography	311.1
Sending or bringing into state, possessing for distribution: child-related pornography	311.2(b), (c) or (d)
Sexual exploitation of a child	311.3
Using a minor to assist in making or distributing child pornography	311.4
Advertising or distributing child pornography	311.10

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<b>Crime</b>	<b>Penal Code Section</b>
Possessing child pornography	311.11
Distribution/exhibition of harmful/patently offensive matter to children	313.1(a) and (b)
Lewd or obscene exposure of private parts	314(1) or (2)
Attempted lewd or obscene exposure of private parts	314(1) or (2)
Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir, or public water supply (must be a felony conviction)	347(a)
Infliction of injury to elder and dependent adult	368 [368(b) or (c) if after January 1, 1999], [368(a) or (b) if prior to January 1, 1999]
Drawing, exhibiting or using a loaded firearm on the grounds of a day care center. (must be a felony conviction)	417(b)
Arson with great bodily injury	451(a)
Arson of inhabited structure or property only to facilities covered under H & S Code 1596.871	451(b)
Gang related/Extortion (must be a felony conviction)	518 with 186.22 or 186.22
Possess or discharge firearm in or within 1000 feet of a gun free K-12 school zone	626.9
Firearm at playground or youth center	626.95
Possessing weapon at K-12 school	626.10(a)
Solicit child to commit serious specified felony	653j
Stalking against a spouse or child	646.9
Annoy, molest child under 18	647.6 Prior to 1987 it was 647(a)
Solicit another to commit rape, sodomy, etc.	653f(c)
Attempt to solicit another to commit rape, sodomy, etc.	653f(c)
Any attempted murder	664/187
Enhancement for violation of Penal Code section 12308, 12309, or 12310—exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.	667.5(c)(13)
Any violation of Penal Code section 12022.53 - Enhancement for listed felonies where there was the use of a firearm.	667.5(c)(22)
Weapons of Mass Destruction.	11418(b)(1) or b(2)
Reckless possession of destructive device or explosive in public area near theatre, school etc	12303.2
Sell a firearm to a minor	12072(a)(3)(a)
Exploding or igniting, or attempting to explode or Ignite any destructive device or explosive with the Intent of murder, or resulting In bodily harm	12308, 12309 or 12310
Enhanced sentence for listed felonies with use of	12022.53

**Under no circumstances shall** a child be allowed to remain in the home or will an exemption be granted (in order to approve the home) if the prospective caregiver or anyone residing in his or her home **has been convicted of any of the following crimes.**

<b>Crime</b>	<b>Penal Code Section</b>
firearm	
<b>Crime</b>	<b>Business &amp; Profession Code Section</b>
Physician, surgeon, psychotherapist, alcohol and drug abuse counselor who engages in sexual contact with a patient. (must be a felony conviction)	729
Dangerous drug by minor as agent	4336(a)
<b>Crime</b>	<b>Health and Safety Code Section</b>
Induce, use or employ minor to violate drug provision	11353
Controlled substance given or sold to minor	11353.5
Controlled substance given or sold to minor in park	11353.7
Minor induce, use or employ minor to violate drug provision	11354(a)
Sell Marijuana to minor in park	11361(a)
Furnish Marijuana to minor in park	11361(b)
Induce minor to prescription violation	11371
Induce minor to violated provision of drug education by use or possession of controlled substance	11371.1
Manufacturing meth, etc. where child present	11379.7
Minor induce, use or employ minor to violate drug provision	11380

The following are crimes that appear on the prohibited list of crimes specified in Health and Safety Code Section 1522(g)(1) and Title 22 Section 89219.1(c), **for which exemption may only be granted. If these circumstances do not exist, an exemption MAY NOT BE GRANTED.**

<b>Crime</b>	<b>Penal Code Section</b>
Any robbery <sup>1</sup>	211, 212, 212.5, 213, 214
Assault with intent to commit mayhem, rape, sodomy, or oral copulation <sup>2</sup>	220
Any felony punishable by death or imprisonment in the state prison for life without possibility of parole <b>but not</b> for an indeterminate sentence <sup>3</sup>	667.5(c)(7)
Enhancement for any felony which inflicts great bodily injury <sup>4</sup>	667.5(c)(8)

<sup>1</sup> Notwithstanding the above, if a subject has been convicted of a 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, § 1522.

2 A conviction for the attempt to commit this crime is non-exemptible except for attempted assault with intent to commit Mayhem which is excluded at PC, § 290(c)

3 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, § 1522(g)(1)(A)(ii) **if the underlying felony can be exempted.**

4 Exemption may be granted for employment in Community Care facilities only if rehabilitated pursuant to Health & Safety Code, § 1522(g)(1)(A)(ii) **if the underlying felony can be exempted.**

Pursuant to Health and Safety Code section 1522(g)(1)(C)(ii), no exemption shall be granted for any of the following offenses if <b>FIVE (5) YEARS <u>HAVE NOT ELAPSED</u></b> since the date of the conviction:	
<b>Felony physical assault or battery*</b>	
<b>Crime</b>	<b>Penal Code Section</b>
Obstruct / resist and executive officer by force or violence – also includes resisting by threat	69
Intimidate witness by force, or threat of force or violence	136.1(c)(1)
Influence testimony by force or threat of force	137(b)
Threat of force upon witness	139(a)
Use of or threat of force upon witness	140(a)
Resist officer resulting in death of officer	148.10(a)
Unlawful assault / beating by public officer	149
Recruiting criminal street gang member by use of physical violence	186.26(c)
Vehicular manslaughter – accident knowingly caused for financial gain resulting in death	192(c)(3)
Hostage – using person as a shield	210.5
Assault public official	217.1(a)
Attempted train wrecking	218
Throwing missile at common carrier vehicle	219.1
Throwing hard substance at train	219.2
False imprisonment by force or violence	236/237
Human trafficking by force or violence	236.1
Assault against custodial officer	241.1
Assault against school peace officer	241.4
Assault against juror	241.7
Battery	242
Battery against custodial officer...	243(c)(1)
Battery against peace officer	243(c)(2)

Pursuant to Health and Safety Code section 1522(g)(1)(C)(ii), no exemption shall be granted for any of the following offenses if <b>FIVE (5) YEARS <u>HAVE NOT ELAPSED</u></b> since the date of the conviction:	
<b>Felony physical assault or battery*</b>	
Battery causing serious bodily injury	243(d)
Battery against a custodial officer	243.1
Battery against transportation worker or passenger	243.3
Battery against school employee with injuries	243.6
Battery against juror	243.7
Aggravated battery – gassing	243.9
Assault w/ caustic chemicals	244
Assault w/ stun gun or taser	244.5
Assault with a deadly weapon	245(a)(1)
Assault with a deadly weapon –firearm	245(a)(2)
Assault with a deadly weapon –machinegun	245(a)(3)
<b>Crime</b>	<b>Penal Code Section</b>
Assault with a deadly weapon – semiautomatic firearm	245(b)
Assault with a deadly weapon – upon peace officer or firefighter	245(c)
Assault with a deadly weapon – firearm upon peace officer or firefighter	245(d)(1)
Assault with a deadly weapon semiautomatic firearm upon officer	245(d)(2)
Assault with a deadly weapon – machinegun upon officer...	245(d)(3)
Assault with a deadly weapon – driver of cab, bus,...	245.2
Assault with a deadly weapon – custodial officer...	245.3
Assault with a deadly weapon – school employee	245.5
Hazing resulting in death or serious bodily injury	245.6(d)
Shooting into inhabited or occupied dwelling, auto, aircraft, etc	246
Discharge of laser at occupied aircraft	247.5
Rape-victim submits under induced belief that perpetrator is spouse	261(a)(5)
Rape-by threat to use official authority	261(a)(7)
Unlawful sexual intercourse with a minor – felony violation if victim is 3+ years younger or Perpetrator is 21+ and victim is under 16	261.5
Abduction for marriage by force	265
Abduction person against will for prostitution	266a
Abduction person against will for illicit	266b

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<b>Felony physical assault or battery*</b>	
relation	
Pandering by threat or violence	266i(a)
Female genital mutilation	273.4
Willful infliction of corporal injury, other than spouse	273.5
Unlawful use gas, acid or explosive upon public group	375(d)
Lynching	405a
Drawing or exhibiting firearm in threatening manner to Peace Officer	417(c)
Drawing or exhibiting firearm in threatening manner to Vehicle Occupant	417.3
Serious bodily injury results during PC 417 or 417.8	417.6(a)
<b>Crime</b>	<b>Penal Code Section</b>
Drawing or exhibiting firearm with intent to resist arrest	417.8
Extortion by force or threat of force	520
Maliciously moving train creating a substantial likelihood of serious bodily injury or death to another	587.1(b)
Solicitation of carjacking, robbery...	653f(a)
Solicitation of murder	653f(b)
Escape police by force	836.6
Terrorism by use of destructive device	11413
False Weapons of Mass Destruction that causes fear	11418.1
Threat to use of Weapons of Mass Destruction	11418.5
Possession of restricted biological agents	11419
Possession of destructive device	12303
Explosive device on vehicle, vessel, aircraft, etc	12303.1
Exploding destructive device w/ intent to murder	12308
Exploding destructive device causing injury	12309
Exploding destructive device causing death	12310(a)
Exploding destructive device causing mayhem	12310(b)
Placing a booby trap	12355(a)
Escape hospital by force	4011.7
Battery in jail	4131.5
Assault by deadly weapon by prisoner	4501
Aggravated battery by prisoner – gassing	4501.1

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<b>Felony physical assault or battery*</b>	
Battery by prisoner	4501.5
Hostage by prisoner by force	4503
Escape prison by force	4530(a)
Escape jail/prison by force	4532(a)(2)
<b>Crime</b>	<b>Welfare and Institutions Code</b>
Minor escape custody by force	871(b)
Minor escape custody by force	1768.7
Assault/battery on person in CYA	1768.8
Battery by gassing on person in CYA	1768.85
<b>Crime</b>	<b>Vehicle Code</b>
Death or serious bodily injury caused by flight from officer	2800.3
Throw substance on highway with great bodily injury intent	23110(b)
Throw substance at an off-highway motor vehicle with great bodily injury intent	38318(b)

- \* Any similar offences must be carefully reviewed on a case-by-case basis to determine if the offences match any of the above categories. If there is any question, consult with County Counsel.

Pursuant to Health and Safety Code section 1522(g)(1)(C)(ii), no exemption shall be granted for any of the following offenses if <b>FIVE (5) YEARS <u>HAVE NOT ELAPSED</u></b> since the date of the conviction:	
<b>Felony drug or alcohol-related offense *</b>	
<b>Crime</b>	<b>Business and Professions Code</b>
Possession of controlled substance without a prescription	4060
Forgery of prescription	4324
Bringing liquor into prison	25603
<b>Crime</b>	<b>Harbor and Navigation Code</b>
Operating a watercraft under the influence causing injury	655(f)
<b>Crime</b>	<b>Health and Safety Code Section</b>
Furnish controlled. Substances for manufacturing	11104(a)
Sell controlled substances without permit	11106(j)



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<b>Felony drug or alcohol-related offense *</b>	
Nonconforming prescription	11152
Controlled substances prescription for unlawful purpose	11153(a)
Unlawful prescription	11154
Illegal controlled substances prescription	11155
Give controlled substances to addict	11156
False prescription	11157
Counterfeit prescription	11162.5(a)
Fill old, forged or altered prescription	11166
Obtain controlled substances by fraud	11173
Use False name to obtain controlled substances	11174
Possession of controlled substances	11350
Possession controlled substances for sale	11351
Possession of cocaine base for sale	11351.5
Sell or transport of controlled substances into state or country	11352
<b>Crime</b>	<b>Health and Safety Code Section</b>
Sale of substance falsely represented to be controlled substances	11355
Possession of concentrated cannabis	11357(a)
Planting, cultivating, harvesting Marijuana	11358
Possession of Marijuana for sale	11359
Transport over 28.5 grams of Marijuana into state	11360(a)
Cultivation of Peyote	11363
Manufacturing or furnishing drug paraphernalia	11364.7(b)
Maintaining a place for sale of controlled substances	11366
Provide a place for manufacture or sale of controlled substances	11366.5
Using space designed to suppress police entry	11366.6
Sale of chemical, drug or device to make controlled substances	11366.7(b)
False compartment to conceal controlled substances	11366.8
Forging a drug prescription	11368
Possess of controlled substances while armed with a firearm	11370.1
Possession of over \$100,000 from sale of controlled substances	11370.6(a)
Possession of over \$25,000 from sale of	11370.9

Pursuant to Health and Safety Code section 1522(g)(1)(C)(ii), no exemption shall be granted for any of the following offenses if <b>FIVE (5) YEARS <u>HAVE NOT ELAPSED</u></b> since the date of the conviction:	
<b>Felony drug or alcohol-related offense *</b>	
controlled substances	
Manufacture of controlled substances, disposal of hazardous by-products	11374.5
Possession for sale of controlled substances	11375(b)
Unauthorized possession of controlled substances	11377(a)
Possession for Sale	11378
Possession for sale, including Phencyclidine..	11378.5
Transport controlled substances into state or country for sale	11379(b)
Possession for sale of Ketamine	11379.2
Transportation for sale, Phencyclidine: PCP	11379.5
Manufacturing controlled substances	11379.6
Sale of falsely represented substances	11382
Possession of... with intent to manufacture PCP	11383
<b>Crime</b>	<b>Health and Safety Code Section</b>
Possession of... with intent to manufacture Meth	11383.5
Possession of chemicals to make PCP w/intent to sell to manufacturer	11383.6
Possession of chemicals to make meth with intent to sell to manufacturer	11383.7
Cultivation of mushrooms	11390
Transport of mushrooms into state	11391
Under the influence of Cocaine, Heroin, Meth or PCP with loaded firearm	11550(e)
<b>Crime</b>	<b>Penal Code</b>
Gross vehicular manslaughter: intoxicated	191.5(a)
Administering drugs to assist in commission of crime	222
Dinitrophenol for human consumption – banned diet drug	382.5
Interfere with prison work by controlled substances or alcohol	2772, 2790
Bring controlled substances to jail	4573
Bring alcohol or drugs to prison	4573.5
Possession of controlled substances in jail or prison	4573.6, 4573.8
Sell controlled substances in jail or prison	4573.9
<b>Crime</b>	<b>Vehicle Code</b>

Pursuant to Health and Safety Code section 1522(g)(1)(C)(ii), no exemption shall be granted for any of the following offenses if <b>FIVE (5) YEARS <u>HAVE NOT ELAPSED</u></b> since the date of the conviction:	
<b>Felony drug or alcohol-related offense *</b>	
DUI with bodily injury	23153
DUI with prior specified convictions	23175
DUI within 10 yrs of prior felony DUI	23175.5
DUI with prior specified convictions	23550(a)
DUI within 10 years of prior felony DUI	23550.5(a)
DUI with prior vehicular manslaughter	23550.5(b)
<b>Crime</b>	<b>Welfare and Institutions Code</b>
Alcohol at Youth Authority	1001.5

\* Any similar offences must be carefully reviewed on a case-by-case basis to determine if the offences match any of the above categories. If there is any question, consult with County Counsel.

The Marijuana Reform Act of 1977 provides that criminal records related to minor marijuana convictions or arrests, which are over two years old, shall not be considered to be relevant for any purpose by any private or public agency or person and shall be destroyed by the California Department of Justice. Individuals who obtain the protections of these laws may, two years from the date of the conviction or arrest that did not result in a conviction, indicate in response to any question concerning their prior criminal record that he/she was not arrested or convicted of such offense. Despite the mandatory destruction of these records some of the convictions/arrests may still surface during an investigation or background check. Therefore, ASFA staff are required to disregard all convictions and conduct associated with the marijuana convictions listed below:

**Either, a misdemeanor conviction where more than two years have elapsed since the date of the conviction, or two years after the date of an arrest that did not result in a conviction:**

- H&S Code section 11357(b) possession of 28.5 grams or less
- H&S Code section 11357(c) possession of over 28.5 grams
- H&S Code section 11357(d) possession of 28.5 grams or less on K-12 school grounds
- H&S Code section 11357(e) juvenile in possession of 28.5 grams or less
- H&S Code section 11360(b) transportation of 28.5 grams or less

**Felony and misdemeanor convictions not to be considered if the conviction occurred prior to 1976:**

- H&S Code section 11357 possession
- H&S Code section 11364 drug paraphernalia
- H&S Code section 11365 presence where marijuana is being unlawfully used
- H&S Code section 11550 under the influence of marijuana

## Exemption Decision Chart

### Community Care Licensing Evaluators Manual Section 7-1736

<b><u>A</u></b> <b><u>Non Violent</u></b> <b><u>Misdemeanor</u></b>	<b><u>B</u></b> <b><u>Violent</u></b> <b><u>Misdemeanor</u></b>	<b><u>C</u></b> <b><u>Non Violent Felony</u></b>	<b><u>D</u></b> <b><u>Violent Felony</u></b>
	Exemption may only be approved by the Branch Chief* or designee or county equivalent.		Exemptions may only be approved by the Branch Chief or designee or county equivalent.
<b>No more than 1</b>  1 year must lapse since incarceration or completion of supervised probation. If unsupervised probation, 1 year since the date of the conviction.  Any exemption to the time period must be approved by the Branch Chief or designee or county equivalent.	<b>1 or more</b>  15 years must lapse since incarceration or completion of supervised probation. If unsupervised probation, 15 years since the date of the last violent misdemeanor conviction.**  Any exemption to the time period must be approved by the Branch Chief or designee or county equivalent.	<b>No more than 1</b>  4 years must lapse since incarceration or completion of supervised probation or parole. If unsupervised probation, 4 years since the date of the conviction.***  Any exemption to the time period must be approved by the Branch Chief or designee or county equivalent.	<b>1 or more</b>
<b>2 years or more</b>  4 years must lapse since incarceration or completion of supervised probation or parole. If unsupervised probation, 4 years since date of the conviction.  Any exemption to the time period must		<b>2 or more</b>  10 years must lapse since incarceration or completion of supervised probation or parole. If unsupervised probation, 10 years since date of the conviction.  Any exemption to the time period must	

<p style="text-align: center;"><b><u>A</u></b> <b><u>Non Violent</u></b> <b><u>Misdemeanor</u></b></p>	<p style="text-align: center;"><b><u>B</u></b> <b><u>Violent</u></b> <b><u>Misdemeanor</u></b></p> <p>Exemption may only be approved by the Branch Chief* or designee or county equivalent.</p>	<p style="text-align: center;"><b><u>C</u></b> <b><u>Non Violent Felony</u></b></p>	<p style="text-align: center;"><b><u>D</u></b> <b><u>Violent Felony</u></b></p> <p>Exemptions may only be approved by the Branch Chief or designee or county equivalent.</p>
<p>be approved by the Branch Chief or designee or county equivalent.</p>		<p>be approved by the Branch Chief or designee or county equivalent.</p>	

\*For the purpose of this Procedural Guide, the Branch Chief will be considered a DCFS Division Chief.

\*\*If the individual has a combination of convictions that include violent misdemeanor(s) and nonviolent misdemeanors and/or nonviolent felonies, apply the criteria from column A, B, or C that provides the longest time period since the last conviction, incarceration or supervised probation. In addition, consider all criteria as required by Evaluator Manual Section 7-1731 Evaluation of Standard Exemption.

\*\*\*If the individual has a combination of convictions that include both a nonviolent felony and a nonviolent misdemeanor(s), consider all criteria as required by Evaluator Manual Section 7-1731 Evaluation of Standard Exemption. In addition, determine if the misdemeanor(s) conviction and the felony conviction are similar crimes. In cases where there is a combination of crimes including a nonviolent felony and nonviolent misdemeanor(s), use the standard for two or more nonviolent felonies unless it is determined that the 4-year time frame is more appropriate because of the nature of the offense. If the 4- year criterion is recommended, approval by a first level supervisor is required.