

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 18, 2001

ALL-COUNTY LETTER NO. 01-69

REASON FOR THIS TRANSMITTAL

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

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY WELFARE LICENSING SUPERVISORS
ALL COUNTY CHIEF PROBATION OFFICERS

SUBJECT: COUNTY WAIVER AUTHORITY FOR SPECIFIED CRIMINAL RECORD
CONVICTIONS PRIOR TO PLACEMENT OF CHILDREN WITH
RELATIVES OR POTENTIAL GUARDIANS

REFERENCE: Senate Bill 884-Welfare and Institutions Code (WIC) Section 361.4

The purpose of this All County Letter (ACL) is to inform child welfare agencies and probation departments of the provisions in Senate Bill (SB) 884, Chapter 445, Statutes of 2001. As urgency legislation, SB 884 took effect immediately on October 3, 2001, the date it was signed into law by Governor Davis.

Further, this ACL provides a process for counties to use when requesting a waiver to WIC Section 361.4 regarding the prohibition for placement of children in the home of a relative, or prospective guardian, or other person found to have a criminal history, who is not a licensed or certified foster parent.

BACKGROUND

SB 645 (Chapter 949, Statutes of 1998) added Section 361.4 to the WIC that outlined the procedures for placement of children in the home of a relative, or prospective guardian, or other person who is not a licensed or certified foster parent. WIC Section 361.4(d)(2) prohibits the placement of children in such homes if the Department of Justice finds through a review of submitted fingerprints, a criminal history other than a minor traffic violation, as described in Health and Safety Code Section 1522(g)(1). However under certain circumstances, an exemption to a criminal record may be granted.

SB 884 clarifies that CDSS may grant the authority for counties to consider and approve appropriate individual criminal record exemptions. WIC Section 361.4(d)(3)(A) allows the

county to obtain this authority by issuance of a State waiver. The approval waiver allows the county to exercise the conditional authority, granted by the Legislature, to evaluate and grant appropriate individual criminal record exemptions for a relative, or prospective guardian, or other person who is not a licensed or certified foster parent, provided certain conditions are met. The county need request the waiver only once.

WAIVER REQUEST

Attachment 1 provides a Sample Waiver Request Letter for county use. Counties that have not requested a general waiver must do so in order to make exemptions to the provisions in WIC Section 361.4. **Prior to the issuance of this ACL, counties that have already requested and received a waiver need not request a new one (see Attachment 2 - list of counties).**

If a county would like to request a waiver pursuant to WIC Section 361.4(3)(A), the county director must submit a written request to CDSS Director's designee identified below:

**Patricia Aguiar, Chief
Foster Care Branch
California Department of Social Services
744 P Street, MS 19-73
Sacramento, CA 95814**

The CDSS may grant the waiver pursuant to WIC Section 361.4 if the county complies with the conditions set forth by CDSS. The Director's designee shall grant or deny the waiver within 14 days of receipt of the county's request letter.

SB 884 codifies in WIC Section 361.4(6), that counties who have not requested and received permission to grant criminal record exemptions do not have the ability to place a child into the home of a relative, guardian or other individual that is not a licensed or certified foster parent and who has been convicted of a crime other than a minor traffic violation.

RESOURCES FOR IMPLEMENTING THE WAIVER

The exemption function for relatives, prospective guardians, other non-licensed or non-certified individuals is assigned to child welfare services, rather than the county licensing units. Counties that have a current contract with CDSS to license foster family homes may request technical assistance from their county licensing unit. Counties that do not have a current contract with CDSS to license foster family homes may request technical assistance from the Foster Care Policy Bureau at (916) 445-0813.

The Community Care Licensing (CCL) Background Check Exemptions Decision Guidelines, detail the procedures that are to be followed when completing the exemption process. You can find those guidelines in the CCL Evaluator Manual Sections 7-1700 to 7-1736.

If your county does not perform Foster Family Home or Family Child Care licensing you may contact the Foster Care Policy Bureau for a copy of these sections at the above telephone number.

REVIEW OF EXEMPTIONS GRANTED UNDER THE WAIVER

The CDSS shall monitor county implementation for compliance and conduct an evaluation through random sampling of county exemption decisions to ensure that counties evaluate individual criminal records; and allow or disallow placements according to Health and Safety Code Sections 1522(g)(1).

The waiver will cover all subsequent individual county exemptions so long as the county complies with the conditions set forth in WIC Section 361.4. Should compliance not be maintained the waiver will be terminated upon notice by CDSS to the county.

If you have any questions regarding the waiver request pursuant to WIC Section 361.4(3)(A), please contact the Foster Care Policy Bureau at (916) 445-0813. This ACL is available at <http://www.dss.cahwnet.gov/getinfo/acl00/default.htm>.

Sincerely,

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

c: California Judicial Council
CWDA

SAMPLE WAIVER REQUEST LETTER

Patricia A. Aguiar, Chief
Foster Care Branch
744 P Street, M. S. 19-73
Sacramento, California 95814

Dear Ms. Aguiar:

(County Name) is requesting a waiver from the California Department of Social Services (CDSS) to Welfare and Institutions Code Section 361.4 regarding prohibition for placement of children in the home of a relative, or prospective guardian, or other person with a criminal history finding by the Department of Justice (DOJ). (County Name) is requesting a waiver for the authority to evaluate and grant appropriate individual criminal record exemptions for a relative, or guardian, or prospective guardian or other person who is not a licensed or certified foster parent, provided certain conditions are met.

In requesting the waiver, (County Name):

- 1) Commits to following the CDSS criminal records exemption process consistent with Health and Safety Code Section 1522 (g), (1); Title 22 Division 6, Chapter 7.5; and Section 87019 of the California Code of Regulations when assessing the good character and rehabilitation of the relative(s) or prospective guardian(s) or other person(s) who is not a licensed or certified foster parent;
- 2) Will implement the same standards and practices currently used to license foster family homes for the criminal record exemptions of relatives or prospective guardians or other persons: and
- 3) Will maintain a listing of criminal record exemptions the county grants to relatives or prospective guardians, or other person who is not a licensed or certified foster parent. The listing will be maintained while the case is open and for a minimum of three years after the case is closed. The listing will include:
 - Case name
 - Case number
 - Name of child
 - Birth date of child
 - Child's relationship to person who received exemption
 - Name of person who received exemption
 - Birth date of person who received exemption, and
 - Exemption processing records which will be maintained while the case is open and for a minimum of three years after the case is closed.

(County Name) understands the waiver and the county's records shall be made available to CDSS and may be subject to periodic review by CDSS for compliance with the waiver requirements. It is the intent of (County Name) to maintain strict compliance with all required conditions to maintain this waiver.

Sincerely,
(County Welfare Director Signature)

LIST OF COUNTIES WHO HAVE REQUESTED AND RECEIVED A WAIVER

Alameda
Butte
Contra Costa
Fresno
Kern
Los Angeles
Madera
Mendocino
Monterey
Orange
Plumas
Sacramento
San Bernardino
Santa Cruz
San Diego
San Francisco
San Joaquin
San Luis Obispo
Shasta
Sutter
Tulare
Tuolumne
Ventura