California needs caring, dedicated, and qualified people to work with the elderly, disabled, and children. The employment process is complicated for those who have criminal histories; having an attorney will be helpful. Efforts are underway to enact new laws to simplify the process. In the meantime, the following information may help you understand California law as it functions now.

I. APPLYING TO WORK AS A CAREGIVER

I have a criminal record. Will that prevent me from becoming a caregiver?

Having a conviction history does not automatically prevent someone from working as a caregiver. However, most people who have convictions will need to request what is called an “exemption” from the Department of Social Services (DSS) to work as a caregiver.

Can an employer see my criminal history?

It depends on what is on your record. California law requires criminal background checks for those who work with the elderly, disabled, and children. When someone applies for a job as a caregiver, the employer must submit his or her name to the DSS. The California Department of Justice then sends the DSS information on the worker’s background.

The DSS Caregiver Background Check Agency grants a clearance to work as a caregiver to those who have a minor or no record.

For others with a record, the DSS Caregiver Background Check Bureau will send you and your potential employer a summary of your criminal history.

1. DSS will tell the employer that it cannot permit you to work at a licensed worksite until you receive an “exemption.” Some employers will help job applicants request an exemption to work at their facility.

2. DSS will tell you about the procedure to get a criminal record “exemption.” Your employer may help you apply for an exemption, or you can apply on your own.

Are different convictions treated differently?

Yes. DSS considers whether a person’s conviction(s) involved:
- misdemeanors or felonies
- nonviolent or violent offense(s)
- court (informal) or supervised (formal) probation
- incarceration, and
- how much time has passed since the last conviction.

II. APPLYING FOR A CRIMINAL RECORD EXEMPTION

What is a criminal record exemption?

A criminal record exemption allows people to work as caregivers despite having convictions on their records.

Is there a deadline to apply for a criminal record exemption?

Yes. If you receive a letter from DSS denying your request for clearance to work as a caregiver based on your record, you must ask for a criminal record exemption within 45 days of the date of the DSS letter. You can ask for an extension, but if you do, you should submit your request within 45 days of receiving the letter so the DSS does not close your file.

How do I get a DSS exemption to work as a caregiver?

It is helpful to have an attorney assist you in preparing your request for an exemption since the laws and procedures are complicated. Below is a summary of the steps involved:
DSS should grant your request for an exemption if you show “substantial and convincing evidence to support a reasonable belief that [you] are of good character.” Generally this involves submitting:

- a brief explanation of what was going on in your life at the time of your conviction(s),
- what happened to change your path, and
- what you have done since the time of your conviction(s) to show that you will be a qualified, reliable, and responsible caregiver.

You can include documents to show your accomplishments, such as:

- a description of any classes, programs, or education you have completed after your last conviction
- copies of any certificates you have received
- at least three letters of support from persons who can state that you are moving forward with your life
  The letters should include the writer’s contact information. DSS asks that the letters be from persons who are not your relatives or the employer you want to work for.

A summary of the materials DSS requests appears in the endnote. It is helpful to include a job description showing the job duties for the position you desire. If your conviction history is not substantially related to the job duties, you can argue that your past offenses should not prevent you from performing those duties.

A note regarding police reports: if you have a recent felony or serious misdemeanor conviction, it will help to submit a copy of the police report from your court file or from the police department that wrote the report.

If the police report is inaccurate or misleading, you can explain why in your request for an exemption.

If you request a hearing (see below), DSS will send you copies of the police reports 30 days prior to the hearing. However, it can be helpful to gather the information yourself ahead of time.

You can find more information about how to show that your past does not define your future in the Record Clearance Project Fact Sheet called Your Rights Regarding Professional Licenses When You Have a Conviction History.

What is a conditional exemption?
The DSS sometimes grants conditional exemptions that enable people to work with certain restrictions. For example, a person with a recent DUI conviction can be granted a conditional exemption to work as a caregiver as long as he or she does not drive as part of his or her job duties.

III. IF YOUR REQUEST FOR AN EXEMPTION IS DENIED

What if DSS denies my request for an exemption?
If DSS denies your request for an exemption, you have the right to ask for a hearing. You have 15 days from the date of the DSS letter denying you an exemption to request a hearing. The DSS will then schedule a hearing before an Administrative Law Judge (ALJ).

What if I don’t appeal the DSS denial letter? Can I just apply somewhere else?
Not if you apply at another site that requires a DSS review. The law states that if you don’t appeal, you must wait for one or two year(s) before you reapply for an exemption, depending on what path you take.

DSS wrote that it denied my request for clearance because my conviction history makes me ineligible for a DSS exemption. What can I do?
California law makes individuals who have been convicted of certain offenses ineligible for a DSS exemption. The list of convictions that result in ineligibility primarily includes violent felonies such as kidnapping, rape, and child-related sex offenses. Lesser offenses such as robbery and first-degree burglary result in ineligibility if they involve “crimes against an individual.”

Note: People frequently are mistaken about what specific conviction resulted in a case. It is helpful to look up the specific conviction on your RAP sheet.

The law regarding ineligible convictions is different for those working in community care facilities serving the disabled and those working in childcare or with the elderly.

Those working with the disabled can receive an exemption allowing them to work at community care facilities even with so-called ineligible convictions on their records if they can demonstrate rehabilitation, as explained in the next section.
For caregivers who are working in child care or with the elderly (but not the disabled), if your conviction appears on the list of ineligible convictions, the law may be changing to eliminate ineligible convictions. If the law changes, you could then appeal to show why you should be eligible for an exemption.

If the DSS Decision denies my request for an exemption, is there anything I can do?

If the Decision denies your request for an exemption, you can ask for Reconsideration. Reconsideration is used when there is an obvious error in the Decision, such as leaving out a key witness or listing a conviction that wasn’t yours.

You do not need to request Reconsideration, but can file an appeal directly. The denial letter will describe your rights to appeal the decision. It will be helpful to have attorney assistance if you decide to appeal.

Usually you have two choices for appeal:

1. **Appeal to court.** This is called a “writ of mandate (or mandamus).” The court will review the DSS file and hearing record to determine whether the ALJ hearing was fair, whether the Judge’s findings are supported by substantial evidence, and whether the agency committed any errors of law.
   
   You have to appeal within **60 days** of the date the decision is mailed or delivered.

2. **Appeal to an administrative appeals board.** This is an appeals board within an administrative agency. Generally, appeals to boards are less formal than appeals to courts. If the board turns you down, you can go to court.

If I get an exemption, can I use it at different facilities?

Yes. Once you get an exemption, it can be transferred between facilities. The new facility can submit a Criminal Record Exemption Transfer form (LIC 9188) to ask the DSS to transfer your exemption to it.
Instead of referring to a timeframe, we believe that the agency should evaluate whether the person is sufficiently removed from what was going on at the time of the person's convictions, as evidenced by their statements and documents.

The SJSU Record Clearance Project is solely responsible for its content.

The standard Department of Social Services form mentions only the two-year reapplication period, although the shorter period also applies.


In Glesmann v. Saenz, 140 Cal. App. 4th 960 (Cal. Ct. App. 2006), the DSS claimed that a nurse who had committed a second degree burglary offense was ineligible for an exemption. The court disagreed and found the nurse eligible for an exemption since the offense did not involve a crime against an individual.

The DSS Reference Manual for Background Check Procedures 09RM-04 7-1735 pages 66-68 and Table 7-1736 page 69 (May 2009) at http://www.cdss.ca.gov/res/pdf/BackgroundCheckProcedures.pdf. See also 7-1720 page 43 (November 2009) and 7-1731 for additional details regarding how DSS evaluates different cases.

Note that the waiting periods that the DSS manual lists to determine whether to grant exemptions for people with convictions are arbitrary and excessive. For example, for what it characterizes as a "violent" misdemeanor conviction, the DSS chart appears to seek more than twice the time provided for the period of rehabilitation used for most prison cases – which are typically felonies – namely, seven years. See Penal Code § 4852.03.

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The laws outlining requirements involving caregivers with criminal histories are in California Health & Safety Code §§ 1522(g) (community care facilities), 1568.09(f) (residential care facilities for persons with chronic life-threatening illnesses), 1569.37(f) (residential care facilities for the elderly) and 1596.872(f) (child day care facilities) and Cal. Code Regs. tit. 22 § 80019.1.

The DSS asks for: a job description, a request for an exemption, a copy of the signed Criminal Record Statement (LIC-508) completed when hired; a description of the events surrounding each conviction including the date, what happened, why it happened, and any other information you feel is important about the crime; what you have done or how your life has changed to prevent you from committing this type of offense again; documentation that your current or last period of probation is/was informal (optional); verification of training, classes, courses, treatment or counseling sessions completed; three dated, signed character reference statements not from your relatives or family members nor from employees associated with the licensed facility on a Reference Statement form (LIC 301E); mailing address and telephone number; police reports involving the crime(s) for which you were convicted, or a letter from law enforcement stating that a report no longer exists. See http://www.cdss.ca.gov/inforesources/ Community-Care/Caregiver-Background-Check/Background-Check-Process ; Cal. Code Reg. tit. 22 § 80019.1.

Some police reports are included in criminal case files; you can ask for copies of the court file at the courthouse where you were convicted. Copies from court files cost approximately 50 cents per page.

Or you can complete a request form and submit it to the police or sheriff’s department that handled the initial arrest. Instructions and costs vary; check with the department to find out how to proceed. Getting a copy of your RAP sheet will make it easier to figure out what police departments were involved and provide a case number for locating the file.

If the conviction is old, the police report may have been destroyed, particularly for misdemeanors. If this is the case, you can ask for a letter saying so.


In Glesmann v. Saenz, 140 Cal. App. 4th 960 (Cal. Ct. App. 2006), the DSS claimed that a nurse who had committed a second degree burglary offense was ineligible for an exemption. The court disagreed and found the nurse eligible for an exemption since the offense did not involve a crime against an individual.

See Cal. Health & Safety Code § 1522(g)(1)(a)(ii). Other care facilities for children and the elderly do not have similar provisions to allow people to work if they have an ineligible conviction. Examples of “ineligible” convictions that can be overcome with a COR or DA recommendation for those who want to work as caregivers in community care facilities include murder or voluntary manslaughter, mayhem, felony punishable by death or life in prison, felony with great bodily injury (including abuse of elders, children and others), some sex offenses, crimes that are not against an individual, felonies involving use of a firearm, and some convictions prior to July 1977.


California Penal Code §§ 4852.01-4852.22 are the laws related to Certificates of Rehabilitation.

California Penal Code §§ 4852.03, 4852.06. A court may shorten the time periods in the interests of justice, except when a person is required to register as a sex offender under Penal Code § 290. See Cal. Penal Code § 4852.22.
