
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2461 **Hearing Date:** June 26, 2018
Author: Flora
Version: May 25, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal History Information: Subsequent Arrest Notification: State Department of Social Services*

HISTORY

Source: The Medical Board of California
Prior Legislation: None
Support: Unknown
Opposition: None known
Assembly Floor Vote: 75 - 1

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ) to continually update authorized entities with information about new arrests and convictions for people who have their fingerprints on file with the DOJ or the Federal Bureau of Investigation (FBI) as a result of applying for a job, license, or certification.

Existing law requires DOJ to maintain state summary criminal history information. (Penal Code § 11105 (a).)

Existing law requires DOJ to furnish state summary criminal history information to specified entities, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 11105 (b).)

Existing law allows DOJ to furnish state summary criminal history information to specified entities and, when specifically authorized, federal-level criminal history information upon a showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 11105 (c).)

Existing law permits DOJ to provide subsequent state or federal arrest or disposition notification to any entity authorized by state or federal law to receive such information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or the FBI as the result of an application for licensing, employment, certification, or approval. (Penal Code § 11105.2.)

Existing law authorizes, notwithstanding any other law, a human resource agency or an employer to request from DOJ records of all convictions or any arrest pending adjudication involving the offenses specified of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. Requires DOJ to furnish the information to the requesting employer and also send a copy of the information to the applicant. (Penal Code § 11105.3 (a).)

Existing law requires a local criminal justice agency to furnish local summary criminal history information to a list of specified entities, and authorizing the local criminal justice agency to furnish this information to any of a list of specified entities upon a showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 13300.)

This bill requires DOJ to provide subsequent state or federal arrest or disposition notification to the State Department of Social Services, the Medical Board of California, and the Osteopathic Medical Board of California to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or the Federal Bureau of Investigation (FBI) as the result of an application for licensing, employment, certification, or approval.

This bill specifies that an entity that submits the fingerprints of applicants for licensing, employment, certification, or approval to the DOJ for the purpose of establishing a record of the applicant to receive subsequent state or federal arrests or dispositions shall immediately notify the DOJ when the employment of the applicant is terminated, when the applicant's license or certificate is revoked, when the applicant may no longer renew or reinstate the license or certificate, or when a relative caregiver's or nonrelative extended family member's approval is terminated.

COMMENTS

1. Need for This Bill:

According to the author:

Although a change to state law in 2013 allows DOJ to provide entities—such as DSS—with subsequent criminal history information from the Federal Bureau of Investigation (FBI), once an individual passes the background check and has been given access to a licensed care facility, DOJ is no longer required to inform DSS of subsequent criminal activity. This means that Social Services—and other entities

in California that rely on this information—may not be aware of critical criminal history information once someone has already been hired.

AB 2461 will ensure that the Department of Social Services is aware of the complete criminal history of every individual working in community care facilities across California. Without this legislation we cannot fully ensure the safety of vulnerable individuals living in community care facilities

2. Subsequent Arrest Information

DSS is in charge of some 70,000 community care facilities in the state (Audit at 5). These facilities are responsible for taking care of vulnerable populations, including minor children and the elderly. It is therefore necessary to vet the backgrounds of individuals who have access to the community care facilities, such as volunteers and employees. In order to do so, DSS has established the Caregiver Background Check Bureau (CBCB) which reviews whether a potential employee or volunteer is fit to work within its care facilities. One important part of the CBCB check is a review of the summary criminal history information received from DOJ.

When a person applies to be a volunteer or an employee at a community care facility, existing law *requires* the DOJ to provide information regarding every conviction, every arrest for which the individual is awaiting trial, sex offender registration status, and every arrest for crimes specified in the Health and Safety Code section 1522(a)(1), which includes murder, elder abuse, and assault. (See Penal Code § 11105(m).) If DOJ does not have records of a disposition for the arrest, it must make a genuine effort to determine the disposition. (*Id.*) Once a person has been granted access to a facility, however, DOJ *can, but is not required* to pass along subsequent arrest and conviction information. (See Penal Code § 11105.2 (a).) This bill would make it a *requirement* for DOJ to pass along all subsequent arrest and conviction information to the Department of Social Services, the Medical Board of California, the Osteopathic Medical Board of California when they had lawfully requested and received such information, including DSS.

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