
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1298 **Hearing Date:** April 17, 2018
Author: Skinner
Version: April 4, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *The Increasing Access to Employment Act*

HISTORY

Source: Californians for Safety and Justice

Prior Legislation: SB 900 (Ortiz) Chapter 627, Stats. 2002

Support: California Public Defenders Association; Ella Baker Center for Human Rights

Opposition: None known

PURPOSE

The purpose of this bill is to clarify that when a criminal conviction has been expunged or dismissed it shall not be released as part of a criminal records check by specified entities and to provide that a person shall get a copy of his or her Criminal Offender Record Information before it is sent to the third party that requested it and should have not less than five days to request challenge the accuracy or completeness of the record.

Existing law requires the Department of Justice (DOJ) to maintain state summary criminal history information and requires the Attorney General to furnish state summary criminal history information to authorized entities or individuals for employment, licensing, volunteering etc. (Penal Code § 11105)

Existing law provides summary criminal history information including every conviction of an offense rendered against the applicant except a conviction where the verdict has been set aside after probation, and any arrest pending adjudication shall be furnished by the DOJ, pursuant to an authorized request by any of the following:

- A person providing direct care in services in a community care facility, foster family home, certified family home or resource family of a licensed foster family agency. (HSC § 1522)
- Individuals with contact with residents of residential care facilities for persons with chronic, life threatening illnesses. (HSC § 1568.09)
- Persons who operate or provide direct care services in a residential care facility for the elderly. (HSC § 1569.17)
- Individuals who operate or provide direct care services in a child care center or family child care home. (HSC § 1596.871) (Penal Code § 11105(m))

This bill would provide that in the above circumstances the DOJ shall not send convictions:

- For which the person has withdrawn their plea after satisfying the terms of a misdemeanor. (Penal Code § 1203.4a)
- If a plea has been withdrawn after serving a jail felony. (Penal Code §1203.41)
- The conviction has been expunged. (Penal Code §1203.42)
- The records of a juvenile have been sealed (Penal Code §1203.45)
- The crime was as a result of human trafficking and the person has been given relief. (Penal Code § 1203.49)
- A person was granted relief because he/she was a combat veteran and the conviction was ultimately dismissed. (Penal Code § 1170.9)

Existing law provides summary criminal history information including specified convictions of an offense rendered against the applicant for which the applicant was incarcerated within the last 10 years except a conviction where the verdict has been set aside after probation, and any arrest pending adjudication shall be furnished by the DOJ, pursuant to an authorized request by any of the following:

- A cable Corporation.
- A human resources agency. (Penal Code § 1105.3)
- A contract or proprietary security organization. (Penal Code § 1105.4)
- In-home supportive services provider. (Welfare and Institutions Code § 15660) (Penal Code § 11105(n))

This bill would provide that in the above circumstances the DOJ should only send convictions for which the person was incarcerated or on probation or parole within 7 years of the date of the request and the DOJ shall not send convictions:

- For which the person has withdrawn their plea after satisfying the terms of a misdemeanor. (Penal Code § 1203.4a)
- If a plea has been withdrawn after serving a jail felony. (Penal Code §1203.41)
- The conviction has been expunged. (Penal Code §1203.42)
- The records of a juvenile have been sealed (Penal Code §1203.45)
- The crime was as a result of human trafficking and the person has been given relief. (Penal Code § 1203.49)
- A person was granted relief because he/she was a combat veteran and the conviction was ultimately dismissed. (Penal Code § 1170.9)

Existing law provides summary criminal history information including every conviction of specified offenses listed in the financial code rendered against the applicant except a conviction where the verdict has been set aside after probation, and any arrest pending adjudication shall be furnished by the DOJ, pursuant to an authorized request by agencies or organizations specified under the financial code. (Penal Code § 11105(o))

This bill would provide that in the above circumstances the DOJ shall not send convictions:

- For which the person has withdrawn their plea after satisfying the terms of a misdemeanor. (Penal Code § 1203.4a)
- If a plea has been withdrawn after serving a jail felony. (Penal Code §1203.41)
- The conviction has been expunged. (Penal Code §1203.42)
- The records of a juvenile have been sealed (Penal Code §1203.45)

- The crime was as a result of human trafficking and the person has been given relief. (Penal Code § 1203.49)
- A person was granted relief because he/she was a combat veteran and the conviction was ultimately dismissed. (Penal Code § 1170.9)

Existing law provides that summary criminal history information including every conviction of an offense rendered against the applicant except a conviction where the verdict has been set aside after probation, and any arrest pending adjudication shall be furnished by the DOJ, pursuant to an authorized request by any agency, organization or individual or transportation company not specified in another subsection or a statute that incorporates the requirements by reference and the information is to be used for employment, licensing or certification purposes. (Penal Code § 11105(p))

This bill would provide that in the above circumstances the DOJ shall not send convictions:

- For which the person has withdrawn their plea after satisfying the terms of a misdemeanor. (Penal Code § 1203.4a)
- If a plea has been withdrawn after serving a jail felony. (Penal Code §1203.41)
- The conviction has been expunged. (Penal Code §1203.42)
- The records of a juvenile have been sealed (Penal Code §1203.45)
- The crime was as a result of human trafficking and the person has been given relief. (Penal Code § 1203.49)
- A person was granted relief because he/she was a combat veteran and the conviction was ultimately dismissed. (Penal Code § 1170.9)

Existing law provides that, for a fee, a person can make a request to the DOJ to get a copy of their criminal record check. (Penal Code § 11124)

Existing law provides for a procedure if a person wants to question the accuracy or completeness of any material matter contained in his or her criminal record as provided by the DOJ. (Penal Code § 11126)

Existing law provides that whenever state or federal summary criminal history information is furnished by the DOJ as a result of an application by an authorized agency, organization or individual and the information is to be used of reemployment, licensing or certification purposes, the authorized agency, organization or individual shall expeditiously furnish a copy of the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing or certification decision. When furnished other than in person, the copy shall be delivered to the last contact information provided by the applicant. (Penal Code § 11105 (t))

This bill provides instead that the DOJ shall first furnish a copy of the Criminal Offender Record Information (CORI) to the subject of the request. After furnishing a copy to the subject, but prior to furnishing a report to a third party, the department shall allow the subject a reasonable opportunity of not less than five days to challenge the accuracy or completeness of any matter contained in the CORI. The department shall make the necessary corrections pursuant to Section 11126 prior to furnishing the information to the requesting agency, organization, or individual.

COMMENTS

1. Need for This Bill

According to the author:

Licensing agencies and employers can compile a person's criminal history record from any source (court records, local law enforcement records, private background check companies).

Licensing boards and public employers can deny, suspend, and revoke employment and licensure based off of old and dismissed convictions. This prevents people who have proven their rehabilitation from becoming employed in numerous occupations. Individually regulating each licensing board and public employer is nearly impossible because there are so many licensing boards and agencies throughout the state, and the boards will find ways to circumvent regulations if they have access to a person's criminal history at all. Boards and agencies must be prevented from accessing information about old and dismissed convictions in the first place.

Further, appealing a denial from a licensing agency is a difficult task because individuals do not know which records the board will receive. By giving consumers the same CORI that is sent to the boards, they will be in a better position to explain their convictions, show how the conviction does not relate to the profession, and demonstrate their commitment to rehabilitation.

2. Records that Have Been Granted some Relief Shall not be Released

Under existing law, the Department of Justice maintains state summary criminal history information and is authorized to furnish criminal history information to specified entities and individuals for employment, licensing and certification purposes including, people working in community care facilities, residential care facilities, in home supportive service providers, and other employment and licensing purposes. Information that will be disclosed includes any convictions and arrests pending adjudication but does not include sealed records or dismissals where the verdict has been set aside after probation.

This bill would further provide that for specified background checks the records released shall not include convictions:

- For which the person has withdrawn their plea after satisfying the terms of a misdemeanor. (Penal Code § 1203.4a)
- If a plea has been withdrawn after serving a jail felony. (Penal Code §1203.41)
- The conviction has been expunged. (Penal Code §1203.42)
- The records of a juvenile have been sealed (Penal Code §1203.45)
- The crime was as a result of human trafficking and the person has been given relief. (Penal Code § 1203.49)
- A person was granted relief because he/she was a combat veteran and the conviction was ultimately dismissed. (Penal Code § 1170.9)

3. Time Limited Records

Background check information given to: a cable corporation; a human resources agency; a contract or proprietary security organization; or, In-home supportive services provider only includes convictions that occurred within 10 years of the time of the request or for which the person was incarcerated within 10 years, and specified arrests pending adjudication. This bill would instead provide that the convictions released must have occurred within 7 years of the request or the person was incarcerated or on probation or parole within 7 years of the request.

4. Copy of the Record

Existing law allows a person to request his or her own background check from the DOJ and to request errors be fixed in that record. Existing law also requires the requesting agency to furnish the applicant with a copy of the background check if it is used as a basis for denying employment.

This bill would require that when the DOJ furnishes a Criminal Offender Record Information (CORI) to an authorized requester it must first send a copy to the subject of the record and give the subject 5 days to correct the record.

5. Argument in Support

According to the sponsor Californians for Safety and Justice:

When people with criminal records have completed their sentence, paid their debt to society, and are trying in good faith to enter the workforce, we should do our part to ensure that they find real opportunity, not closed doors. These barriers to economic stability harm more than just the individuals who find themselves locked out of employment. They hurt families, communities, the regions people call home, and the workforce they would otherwise join.

Studies have shown that people with criminal convictions perform as well on the job as people without convictions. There is even evidence to suggest that people with convictions leave their jobs less frequently – something any employer would want in a workforce. The problem is not what happens when someone with a criminal conviction gets a job, it is getting in the door.

SB 1298 addresses these problems in several ways. It makes it easier for someone to access their own criminal record – to know what it contains and whether it needs to be corrected – and makes it easier for that person to correct it. In certain circumstances related to employment, it also restructures the results of a criminal record check – limiting those results to active or recent convictions, and providing that when someone has been granted an expungement, that expunged conviction does not appear. SB 1298 also establishes the Increasing Access to Employment Fund to support rehabilitation, reentry, and employment for people seeking work who have criminal convictions.

This bill will help thousands of Californians who have already paid their debt to society and working to rebuild their lives through improving access to jobs and economic stability. It will help all Californians by promoting stronger families, safer communities, and a more robust workforce.