
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1372 **Hearing Date:** July 9, 2019
Author: Grayson
Version: March 27, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Employers: Prohibited Disclosure of Information: Arrest or Detention*

HISTORY

Source: California State Sheriffs' Association

Prior Legislation: AB 2715 (Limon), 2018, failed in Assembly Public Safety
AB 1008 (McCarty), Ch. 789, Stats. of 2017
AB 2343 (Torres), Ch. 256, Stats. of 2012
AB 2727 (Bradford) 2010, failed passage in Assembly Appropriations

Support: Chief Probation Officers of California

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

This bill allows a criminal justice agency to inquire about, seek, and utilize information about certain nonsworn employees concerning an arrest or detention that did not result in a conviction, information concerning a referral or participation in a diversion program, and information that has been judicially dismissed or ordered sealed.

Existing law precludes an employer from asking applicants to disclose information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been dismissed or ordered sealed, and precludes any employer from seeking or utilizing such information as a factor in determining any condition of employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. (Lab. Code § 432.7 subd. (a)(1).)

Existing law allows employers to ask an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial. (Lab. Code § 432.7 subd. (a)(1).)

Existing law precludes employers from asking an applicant for employment to disclose information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and

jurisdiction of juvenile court, and precludes an employer from seeking or utilizing, as a factor in determining any condition of employment, any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law. (Lab. Code § 432.7 subd. (a)(2).)

Existing law exempts persons seeking employment or persons already employed as peace officers and persons seeking employment for positions in the Department of Justice or other criminal justice agencies, from the provisions precluding employers from asking an applicant for employment to disclose information concerning an arrest or detention that did not result in conviction, etc. (Lab. Code § 432.7 subd. (e).)

Existing law allows any criminal justice agency to release, within five years of the arrest, information concerning an arrest or detention of a peace officer or applicant for a position as a peace officer, which did not result in conviction, and for which the person did not complete a postarrest diversion program, to a government agency employer of that peace officer or applicant. (Pen. Code § 13203 subd. (a).)

Existing law allows any criminal justice agency to release information concerning an arrest of a peace officer or applicant for a position as a peace officer, which did not result in conviction but for which the person completed a postarrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any postarrest diversion program or a deferred entry of judgment program to a government agency employer of that peace officer or applicant. (Pen. Code § 13203 subd. (b).)

Existing law states that no peace officer or employee of a law enforcement agency with access to criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information. (Lab. Code § 432.7 subd. (g)(1).)

Existing law states that no other person authorized by law to receive criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information. (Lab. Code § 432.7 subd. (g)(2).)

Existing law prevents a criminal justice agency from releasing information under the following circumstances:

- 1) Information concerning an arrest for which diversion or deferred entry of judgment has been ordered without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed;
- 2) Information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated; and,

- 3) Information concerning an arrest without a disposition without attempting to determine whether diversion or a deferred entry of judgment program has been successfully completed or the individual was exonerated. (Pen. Code § 13203 subd. (c).)

Existing law prevents a government agency employing a peace officer from determining any condition of employment other than paid administrative leave based solely on an arrest report, but allows the information contained in an arrest report to be used as the starting point for an independent, internal investigation of a peace officer in accordance with the law. (Lab. Code § 432.7 subd. (b).)

Existing law defines “criminal justice agencies” are those agencies at all levels of government which perform as their principal functions, activities which either:

- 1) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or
- 2) Relate to the collection, storage, dissemination or usage of criminal offender record information. (Pen. Code, § 13101.)

This bill allows a criminal justice agency to inquire about, request, and utilize information concerning an arrest or detention that did not result in a conviction, or information concerning a referral to, and participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been dismissed or ordered sealed for persons who are employed in criminal justice agencies, as defined by law, provided that the person’s specific duties directly relate to:

- 1) The collection or analysis of evidence or property;
- 2) The apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or,
- 3) The collection, storage, dissemination, or usage of criminal offender record information.

This bill allows a criminal justice agency to release information about an applicant for a nonsworn position within a criminal justice agency, concerning an arrest or detention that did not result in a conviction, and for which the person did not complete a post-arrest diversion program, to a government agency employer of that nonsworn employee.

This bill allows a criminal justice agency to release information about a nonsworn employee concerning an arrest or detention which did not result in conviction but for which the person completed a post-arrest diversion program or a deferred entry of judgment program, or information concerning a referral to and participation in any post-arrest diversion program or a deferred entry of judgment program to a government agency employer of that nonsworn employee.

COMMENTS

1. Need for This Bill

According to the author:

Labor Code 432.7 generally prohibits asking employees or applicants about arrests that did not result in a conviction. Specifically, under subdivision (g):

(1) No peace officer or employee of a law enforcement agency with access to criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(2) No other person authorized by law to receive criminal or juvenile offender record information maintained by a local law enforcement criminal or juvenile justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

However, persons seeking employment, or persons already employed, as Peace Officers or persons seeking employment for positions in the DOJ or other criminal justice agencies as defined in Penal Code §13101 are exempt from the provisions in Labor Code Section 432.7 (e). These provisions in the law allow a law enforcement agency to complete a background check on applicants and ask about prior arrests, but once they are hired, a law enforcement agency can no longer question them about an arrest. There is a companion section in Penal Code §13203 that allows a criminal justice agency to release information concerning an arrest or detention to the employer of a peace officer, but nothing addresses *non-peace officer employees* of an agency for non-sworn positions within an law enforcement agency.

Despite the general restriction on the use of arrest information that did not result in a conviction, there is an exemption in the law for peace officers. Because peace officers are charged with upholding the law they are subjected to a higher level of scrutiny than the average person.

Just like an arrest does not necessarily mean a person is guilty of a crime, the absence of a conviction also does not necessarily mean they have done no wrong. A finding of guilt requires proof beyond reasonable doubt; this is a lofty standard and sometimes cases are dismissed or a defendant is found not guilty due to a lack of evidence, rather than a lack of wrongdoing. Current law allows an employer of peace officers to look into the details of an arrest, and therefore gives the employer a better opportunity to evaluate the moral fitness of the applicant, and

permits a better understanding of how the applicant may handle the responsibility that comes along with upholding and enforcing the laws of the State.

This bill would expand a criminal justice agency's ability to obtain information about its nonsworn employees who work in roles similar to that of a peace officer. Under current law, a criminal justice agency is allowed to make inquiries and requests regarding its peace officers both at the time the peace officer is seeking employment and at any time throughout the officer's tenure with the agency. When it comes to employees other than peace officers, however, the agency can only make inquiries and requests regarding arrest information at the time the person is an applicant for employment. This bill would allow agencies to make requests and inquiries of a non-peace officer at any time during their employment, provided that the person is employed in a role in which his or her specific duties directly relate to 1) the apprehension, prosecution adjudication, incarceration, or correction of criminal offenders, 2) the collection, storage, dissemination or usage of criminal offender record information, or 3) the collection or analysis of evidence or property.

4. Suggested Amendments

At the June 11, 2016 hearing on this bill committee members indicated that they were uncomfortable voting for this bill if it allowed notification to an employer for any arrest record. In order to narrow the bill to the most relevant arrests to the employment at issue, the author may consider limiting the arrests to the following:

- 1) Violent felonies;
- 2) Serious felonies; and
- 3) Crimes of moral turpitude, including but not limited to: theft, embezzlement, extortion, falsifying evidence, bribing, and influencing, intimidating, or threatening witnesses.

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