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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 1480                      **Hearing Date:** June 29, 2021  
**Author:** Rodriguez  
**Version:** April 21, 2021  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Employers: prohibited disclosure of information: arrest or detention*

### HISTORY

**Source:** California State Sheriffs' Association

**Prior Legislation:** AB 2461 (Lackey), 2020, not heard in Asm. Public Safety  
AB 1372 (Grayson), 2019, failed passage in Sen. Pub. Safety  
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:** California Peace Officers Association

**Opposition:** None known

**Assembly Floor Vote:** 76 - 0

### PURPOSE

***This bill allows a law enforcement 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:

Expanding the availability of arrest information to the employers of non-sworn employees within criminal justice agencies recognizes the significant role they play in the criminal justice system while not affecting due process rights.

In the spirit of fostering transparency, ensuring that employees remain of the highest integrity, and maintaining community trust in the ethics of the public servants who work to protect our neighborhoods, it's appropriate to make this information available to law enforcement employers.

### 2. Arrest Information and Employment

As a general matter, state law precludes employers from looking too closely at arrest information which resulted in something less than a conviction. Although arrests frequently show up in criminal history searches, if a specific arrest did not result in a conviction, an employer is prohibited from asking questions about that arrest, or seeking documentation about the arrest, such as police reports and court records. They are also prohibited from using arrest information in hiring or promotion decisions.

One reason for this policy may be that an arrest, in and of itself, does not mean that a person is guilty of a crime. The fact that a person was arrested only means that the arresting officer had "probable cause" to make the arrest. The question of what constitutes "probable cause" for an arrest is not an exact formula, must be decided on a case by case basis, and certainly requires less evidence than that which would be required to hold someone criminally liable for a crime. (*See People v. Ingle* (1960) 53 Cal.2d. 407, 412-13.) In fact, the Penal Code explicitly states that a police officer can arrest a person even if no crime occurred, so long the officer had probable cause to *believe* that the person committed a felony. (Pen. Code § 836 subd. (a)(3).)

### 3. Access to Criminal History of Peace Officers Expanded to Non-Sworn Employees

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. Argument in Support**

According to the California State Sheriffs' Association:

Labor Code §432.7 prohibits asking employees about arrest records that did not result in a conviction. However, persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies, as defined in Penal Code §13101, are exempt from Labor Code §432.7. These provisions in the law allow a law enforcement agency to complete a background check on applicants for non-sworn positions and ask about prior arrests, but once they are hired, a law enforcement agency, due to a loophole in the law, can no longer question them about a future 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-sworn employees of a law enforcement agency. Having ethical and conscientious personnel is pivotal to safeguard the integrity of our criminal justice system no matter the rank or title. So that law enforcement agencies can sustain trustworthy relationships within their communities, they must have the necessary means to request and receive arrest records for specified non-sworn employees. This process ensures equity, transparency, and accountability.

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