

AMENDED IN ASSEMBLY MARCH 27, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2222

Introduced by Assembly Member Block

February 24, 2012

An act to amend Section ~~13300~~ 13302 of the Penal Code, relating to ~~crime~~ *criminal history records*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2222, as amended, Block. Criminal ~~history~~. *history records*.

Existing law limits the disclosure of an individual's local summary criminal history information, and defines the term "local summary criminal history information" as a master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person, including name, date of birth, dates of arrests, and charges. *Under existing law, an employee of a local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized to receive the record or information is guilty of a misdemeanor.* Existing law authorizes a public prosecutor to release local summary criminal history information pursuant to a request under the California Public Records Act under certain conditions, including that the release of information would enhance public safety, the interest of justice, or the public's understanding of the justice system.

This bill would provide that ~~a public prosecutor's case management database in itself is not a "local summary criminal history information," and that a public prosecutor is not prohibited from disclosing electronically stored data that is not a compilation of an individual's criminal history information that is otherwise disclosable~~ *accessing and*

obtaining information from the public prosecutor’s case management database to respond to a request for publicly disclosable information under the California Public Records Act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13302 of the Penal Code is amended to
2 read:

3 13302. ~~Any~~ An employee of the local criminal justice agency
4 who knowingly furnishes a record or information obtained from
5 a record to a person who is not authorized by law to receive the
6 record or information is guilty of a misdemeanor. *Nothing in this*
7 *section shall prohibit a public prosecutor from accessing and*
8 *obtaining information from the public prosecutor’s case*
9 *management database to respond to a request for publicly*
10 *disclosable information pursuant to the California Public Records*
11 *Act (Chapter 3.5 (commencing with Section 6250) of Division 7*
12 *of Title 1 of the Government Code).*

13 SECTION 1. ~~Section 13300 of the Penal Code is amended to~~
14 read:

15 13300. (a) ~~As used in this section:~~

16 (1) ~~“Local summary criminal history information” means the~~
17 ~~master record of information compiled by any local criminal justice~~
18 ~~agency pursuant to Chapter 2 (commencing with Section 13100)~~
19 ~~of Title 3 of Part 4 pertaining to the identification and criminal~~
20 ~~history of any person, such as name, date of birth, physical~~
21 ~~description, dates of arrests, arresting agencies and booking~~
22 ~~numbers, charges, dispositions, and similar data about the person.~~

23 (2) ~~“Local summary criminal history information” does not~~
24 ~~refer to records and data compiled by criminal justice agencies~~
25 ~~other than that local agency, nor does it refer to records of~~
26 ~~complaints to or investigations conducted by, or records of~~
27 ~~intelligence information or security procedures of, the local agency.~~

28 (3) ~~“Local summary criminal history information” does not~~
29 ~~include to a public prosecutor’s case management database.~~

30 (4) ~~“Local agency” means a local criminal justice agency.~~

31 (b) ~~A local agency shall furnish local summary criminal history~~
32 ~~information to any of the following, when needed in the course of~~

1 their duties, provided that when information is furnished to assist
2 an agency, officer, or official of state or local government, a public
3 utility, or any entity, in fulfilling employment, certification, or
4 licensing duties, Chapter 1321 of the Statutes of 1974 and Section
5 432.7 of the Labor Code shall apply:

6 ~~(1) The courts of the state.~~

7 ~~(2) Peace officers of the state, as defined in Section 830.1,
8 subdivisions (a) and (d) of Section 830.2, subdivisions (a), (b),
9 and (j) of Section 830.3, and subdivisions (a), (b), and (c) of
10 Section 830.5.~~

11 ~~(3) District attorneys of the state.~~

12 ~~(4) Prosecuting city attorneys of any city within the state.~~

13 ~~(5) City attorneys pursuing civil gang injunctions pursuant to
14 Section 186.22a, or drug abatement actions pursuant to Section
15 3479 or 3480 of the Civil Code, or Section 11571 of the Health
16 and Safety Code.~~

17 ~~(6) Probation officers of the state.~~

18 ~~(7) Parole officers of the state.~~

19 ~~(8) A public defender or attorney of record when representing
20 a person in proceedings upon a petition for a certificate of
21 rehabilitation and pardon pursuant to Section 4852.08.~~

22 ~~(9) A public defender or attorney of record when representing
23 a person in a criminal case and when authorized access by statutory
24 or decisional law.~~

25 ~~(10) Any agency, officer, or official of the state when the local
26 summary criminal history information is required to implement a
27 statute, regulation, or ordinance that expressly refers to specific
28 criminal conduct applicable to the subject person of the local
29 summary criminal history information, and contains requirements
30 or exclusions, or both, expressly based upon the specified criminal
31 conduct.~~

32 ~~(11) Any city, county, city and county, or district, or any officer
33 or official thereof, when access is needed in order to assist the
34 agency, officer, or official in fulfilling employment, certification,
35 or licensing duties, and when the access is specifically authorized
36 by the city council, board of supervisors, or governing board of
37 the city, county, or district when the local summary criminal history
38 information is required to implement a statute, regulation, or
39 ordinance that expressly refers to specific criminal conduct
40 applicable to the subject person of the local summary criminal~~

1 history information, and contains requirements or exclusions, or
2 both, expressly based upon the specified criminal conduct.

3 ~~(12) The subject of the local summary criminal history
4 information.~~

5 ~~(13) Any person or entity when access is expressly authorized
6 by statute when the local summary criminal history information
7 is required to implement a statute, regulation, or ordinance that
8 expressly refers to specific criminal conduct applicable to the
9 subject person of the local summary criminal history information,
10 and contains requirements or exclusions, or both, expressly based
11 upon the specified criminal conduct.~~

12 ~~(14) Any managing or supervising correctional officer of a
13 county jail or other county correctional facility.~~

14 ~~(15) Local child support agencies established by Section 17304
15 of the Family Code. When a local child support agency closes a
16 support enforcement case containing summary criminal history
17 information, the agency shall delete or purge from the file and
18 destroy any documents or information concerning or arising from
19 offenses for or of which the parent has been arrested, charged, or
20 convicted, other than for offenses related to the parents having
21 failed to provide support for the minor children, consistent with
22 Section 17531 of the Family Code.~~

23 ~~(16) County child welfare agency personnel who have been
24 delegated the authority of county probation officers to access state
25 summary criminal information pursuant to Section 272 of the
26 Welfare and Institutions Code for the purposes specified in Section
27 16504.5 of the Welfare and Institutions Code.~~

28 ~~(17) A humane officer pursuant to Section 14502 of the
29 Corporations Code for the purposes of performing his or her duties.
30 A local agency may charge a reasonable fee sufficient to cover the
31 costs of providing information pursuant to this paragraph.~~

32 ~~(e) The local agency may furnish local summary criminal history
33 information, upon a showing of a compelling need, to any of the
34 following, provided that when information is furnished to assist
35 an agency, officer, or official of state or local government, a public
36 utility, or any entity, in fulfilling employment, certification, or
37 licensing duties, Chapter 1321 of the Statutes of 1974 and Section
38 432.7 of the Labor Code shall apply:~~

39 ~~(1) Any public utility, as defined in Section 216 of the Public
40 Utilities Code, which operates a nuclear energy facility when access~~

1 is needed to assist in employing persons to work at the facility,
2 provided that, if the local agency supplies the information, it shall
3 furnish a copy of this information to the person to whom the
4 information relates.

5 (2) To a peace officer of the state other than those included in
6 subdivision (b).

7 (3) To a peace officer of another country.

8 (4) To public officers, other than peace officers, of the United
9 States, other states, or possessions or territories of the United
10 States, provided that access to records similar to local summary
11 criminal history information is expressly authorized by a statute
12 of the United States, other states, or possessions or territories of
13 the United States when this information is needed for the
14 performance of their official duties.

15 (5) To any person when disclosure is requested by a probation,
16 parole, or peace officer with the consent of the subject of the local
17 summary criminal history information and for purposes of
18 furthering the rehabilitation of the subject.

19 (6) The courts of the United States, other states, or territories
20 or possessions of the United States.

21 (7) Peace officers of the United States, other states, or territories
22 or possessions of the United States.

23 (8) To any individual who is the subject of the record requested
24 when needed in conjunction with an application to enter the United
25 States or any foreign nation.

26 (9) Any public utility, as defined in Section 216 of the Public
27 Utilities Code, when access is needed to assist in employing
28 persons who will be seeking entrance to private residences in the
29 course of their employment. The information provided shall be
30 limited to the record of convictions and any arrest for which the
31 person is released on bail or on his or her own recognizance
32 pending trial.

33 If the local agency supplies the information pursuant to this
34 paragraph, it shall furnish a copy of the information to the person
35 to whom the information relates.

36 Any information obtained from the local summary criminal
37 history is confidential and the receiving public utility shall not
38 disclose its contents, other than for the purpose for which it was
39 acquired. The local summary criminal history information in the
40 possession of the public utility and all copies made from it shall

1 be destroyed 30 days after employment is denied or granted,
2 including any appeal periods, except for those cases where an
3 employee or applicant is out on bail or on his or her own
4 recognizance pending trial, in which case the state summary
5 criminal history information and all copies shall be destroyed 30
6 days after the case is resolved, including any appeal periods.

7 A violation of any of the provisions of this paragraph is a
8 misdemeanor, and shall give the employee or applicant who is
9 injured by the violation a cause of action against the public utility
10 to recover damages proximately caused by the violation.

11 Nothing in this section shall be construed as imposing any duty
12 upon public utilities to request local summary criminal history
13 information on any current or prospective employee.

14 Seeking entrance to private residences in the course of
15 employment shall be deemed a “compelling need” as required to
16 be shown in this subdivision.

17 (10) Any city, county, city and county, or district, or any officer
18 or official thereof, if a written request is made to a local law
19 enforcement agency and the information is needed to assist in the
20 screening of a prospective concessionaire, and any affiliate or
21 associate thereof, as these terms are defined in subdivision (k) of
22 Section 432.7 of the Labor Code, for the purposes of consenting
23 to, or approving of, the prospective concessionaire’s application
24 for, or acquisition of, any beneficial interest in a concession, lease,
25 or other property interest.

26 Any local government’s request for local summary criminal
27 history information for purposes of screening a prospective
28 concessionaire and their affiliates or associates before approving
29 or denying an application for, or acquisition of, any beneficial
30 interest in a concession, lease, or other property interest is deemed
31 a “compelling need” as required by this subdivision. However,
32 only local summary criminal history information pertaining to
33 criminal convictions may be obtained pursuant to this paragraph.

34 Any information obtained from the local summary criminal
35 history is confidential and the receiving local government shall
36 not disclose its contents, other than for the purpose for which it
37 was acquired. The local summary criminal history information in
38 the possession of the local government and all copies made from
39 it shall be destroyed not more than 30 days after the local
40 government’s final decision to grant or deny consent to, or approval

1 of, the prospective concessionaire's application for, or acquisition
2 of, a beneficial interest in a concession, lease, or other property
3 interest. Nothing in this section shall be construed as imposing
4 any duty upon a local government, or any officer or official thereof,
5 to request local summary criminal history information on any
6 current or prospective concessionaire or their affiliates or
7 associates.

8 (d) ~~Whenever an authorized request for local summary criminal~~
9 ~~history information pertains to a person whose fingerprints are on~~
10 ~~file with the local agency and the local agency has no criminal~~
11 ~~history of that person, and the information is to be used for~~
12 ~~employment, licensing, or certification purposes, the fingerprint~~
13 ~~card accompanying the request for information, if any, may be~~
14 ~~stamped "no criminal record" and returned to the person or entity~~
15 ~~making the request.~~

16 (e) ~~A local agency taking fingerprints of a person who is an~~
17 ~~applicant for licensing, employment, or certification may charge~~
18 ~~a fee to cover the cost of taking the fingerprints and processing~~
19 ~~the required documents.~~

20 (f) ~~Whenever local summary criminal history information~~
21 ~~furnished pursuant to this section is to be used for employment,~~
22 ~~licensing, or certification purposes, the local agency shall charge~~
23 ~~the person or entity making the request a fee which it determines~~
24 ~~to be sufficient to reimburse the local agency for the cost of~~
25 ~~furnishing the information, provided that no fee shall be charged~~
26 ~~to any public law enforcement agency for local summary criminal~~
27 ~~history information furnished to assist it in employing, licensing,~~
28 ~~or certifying a person who is applying for employment with the~~
29 ~~agency as a peace officer or criminal investigator. Any state agency~~
30 ~~required to pay a fee to the local agency for information received~~
31 ~~under this section may charge the applicant a fee sufficient to~~
32 ~~reimburse the agency for the expense.~~

33 (g) ~~Whenever there is a conflict, the processing of criminal~~
34 ~~fingerprints shall take priority over the processing of applicant~~
35 ~~fingerprints.~~

36 (h) ~~It is not a violation of this article to disseminate statistical~~
37 ~~or research information obtained from a record, provided that the~~
38 ~~identity of the subject of the record is not disclosed.~~

39 (i) ~~It is not a violation of this article to include information~~
40 ~~obtained from a record in (1) a transcript or record of a judicial or~~

1 administrative proceeding or (2) any other public record when the
2 inclusion of the information in the public record is authorized by
3 a court, statute, or decisional law.

4 (j) Notwithstanding any other law, a public prosecutor may, in
5 response to a written request made pursuant to the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of
7 Division 7 of Title 1 of the Government Code), provide information
8 from a local summary criminal history, if release of the information
9 would enhance public safety, the interest of justice, or the public's
10 understanding of the justice system and the person making the
11 request declares that the request is made for a scholarly or
12 journalistic purpose. If a person in a declaration required by this
13 subdivision willfully states as true any material fact that he or she
14 knows to be false, he or she shall be subject to a civil penalty not
15 exceeding ten thousand dollars (\$10,000). The requestor shall be
16 informed in writing of this penalty. An action to impose a civil
17 penalty under this subdivision may be brought by any public
18 prosecutor and shall be enforced as a civil judgment. A public
19 prosecutor's case management database in itself is not a "local
20 summary criminal history," and nothing in this subdivision
21 prohibits a prosecutor from disclosing electronically stored data
22 that is not a compilation of an individual's criminal history
23 information pursuant to a valid records request under the California
24 Public Records Act.

25 (k) Notwithstanding any other law, the Department of Justice
26 or any state or local law enforcement agency may require the
27 submission of fingerprints for the purpose of conducting summary
28 criminal history information record checks which are authorized
29 by law.

30 (l) Any local criminal justice agency may release, within five
31 years of the arrest, information concerning an arrest or detention
32 of a peace officer or applicant for a position as a peace officer, as
33 defined in Section 830, which did not result in conviction, and for
34 which the person did not complete a postarrest diversion program
35 or a deferred entry of judgment program, to a government agency
36 employer of that peace officer or applicant.

37 (m) Any local criminal justice agency may release information
38 concerning an arrest of a peace officer or applicant for a position
39 as a peace officer, as defined in Section 830, which did not result
40 in conviction but for which the person completed a postarrest

1 ~~diversion program or a deferred entry of judgment program, or~~
2 ~~information concerning a referral to and participation in any~~
3 ~~postarrest diversion program or a deferred entry of judgment~~
4 ~~program to a government agency employer of that peace officer~~
5 ~~or applicant.~~

6 ~~(n) Notwithstanding subdivision (l) or (m), a local criminal~~
7 ~~justice agency shall not release information under the following~~
8 ~~circumstances:~~

9 ~~(1) Information concerning an arrest for which diversion or a~~
10 ~~deferred entry of judgment program has been ordered without~~
11 ~~attempting to determine whether diversion or a deferred entry of~~
12 ~~judgment program has been successfully completed.~~

13 ~~(2) Information concerning an arrest or detention followed by~~
14 ~~a dismissal or release without attempting to determine whether the~~
15 ~~individual was exonerated.~~

16 ~~(3) Information concerning an arrest without a disposition~~
17 ~~without attempting to determine whether diversion has been~~
18 ~~successfully completed or the individual was exonerated.~~