

ASSEMBLY BILL

No. 2222

Introduced by Assembly Member Block

February 24, 2012

An act to amend Section 13300 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2222, as introduced, Block. Criminal history.

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. 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 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 13300 of the Penal Code is amended to
2 read:

3 13300. (a) As used in this section:

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

11 (2) “Local summary criminal history information” does not
12 refer to records and data compiled by criminal justice agencies
13 other than that local agency, nor does it refer to records of
14 complaints to or investigations conducted by, or records of
15 intelligence information or security procedures of, the local agency.

16 (3) “*Local summary criminal history information*” does not
17 include to a public prosecutor’s case management database.

18 ~~(3)~~

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

20 (b) A local agency shall furnish local summary criminal history
21 information to any of the following, when needed in the course of
22 their duties, provided that when information is furnished to assist
23 an agency, officer, or official of state or local government, a public
24 utility, or any entity, in fulfilling employment, certification, or
25 licensing duties, Chapter 1321 of the Statutes of 1974 and Section
26 432.7 of the Labor Code shall apply:

27 (1) The courts of the state.

28 (2) Peace officers of the state, as defined in Section 830.1,
29 subdivisions (a) and (d) of Section 830.2, subdivisions (a), (b),
30 and (j) of Section 830.3, and subdivisions (a), (b), and (c) of
31 Section 830.5.

32 (3) District attorneys of the state.

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

34 (5) City attorneys pursuing civil gang injunctions pursuant to
35 Section 186.22a, or drug abatement actions pursuant to Section
36 3479 or 3480 of the Civil Code, or Section 11571 of the Health
37 and Safety Code.

38 (6) Probation officers of the state.

1 (7) Parole officers of the state.

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

5 (9) A public defender or attorney of record when representing
6 a person in a criminal case and when authorized access by statutory
7 or decisional law.

8 (10) Any agency, officer, or official of the state when the local
9 summary criminal history information is required to implement a
10 statute, regulation, or ordinance that expressly refers to specific
11 criminal conduct applicable to the subject person of the local
12 summary criminal history information, and contains requirements
13 or exclusions, or both, expressly based upon the specified criminal
14 conduct.

15 (11) Any city, county, city and county, or district, or any officer
16 or official thereof, when access is needed in order to assist the
17 agency, officer, or official in fulfilling employment, certification,
18 or licensing duties, and when the access is specifically authorized
19 by the city council, board of supervisors, or governing board of
20 the city, county, or district when the local summary criminal history
21 information is required to implement a statute, regulation, or
22 ordinance that expressly refers to specific criminal conduct
23 applicable to the subject person of the local summary criminal
24 history information, and contains requirements or exclusions, or
25 both, expressly based upon the specified criminal conduct.

26 (12) The subject of the local summary criminal history
27 information.

28 (13) Any person or entity when access is expressly authorized
29 by statute when the local summary criminal history information
30 is required to implement a statute, regulation, or ordinance that
31 expressly refers to specific criminal conduct applicable to the
32 subject person of the local summary criminal history information,
33 and contains requirements or exclusions, or both, expressly based
34 upon the specified criminal conduct.

35 (14) Any managing or supervising correctional officer of a
36 county jail or other county correctional facility.

37 (15) Local child support agencies established by Section 17304
38 of the Family Code. When a local child support agency closes a
39 support enforcement case containing summary criminal history
40 information, the agency shall delete or purge from the file and

1 destroy any documents or information concerning or arising from
2 offenses for or of which the parent has been arrested, charged, or
3 convicted, other than for offenses related to the parents having
4 failed to provide support for the minor children, consistent with
5 Section 17531 of the Family Code.

6 (16) County child welfare agency personnel who have been
7 delegated the authority of county probation officers to access state
8 summary criminal information pursuant to Section 272 of the
9 Welfare and Institutions Code for the purposes specified in Section
10 16504.5 of the Welfare and Institutions Code.

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

15 (c) The local agency may furnish local summary criminal history
16 information, upon a showing of a compelling need, to any of the
17 following, provided that when information is furnished to assist
18 an agency, officer, or official of state or local government, a public
19 utility, or any entity, in fulfilling employment, certification, or
20 licensing duties, Chapter 1321 of the Statutes of 1974 and Section
21 432.7 of the Labor Code shall apply:

22 (1) Any public utility, as defined in Section 216 of the Public
23 Utilities Code, which operates a nuclear energy facility when access
24 is needed to assist in employing persons to work at the facility,
25 provided that, if the local agency supplies the information, it shall
26 furnish a copy of this information to the person to whom the
27 information relates.

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

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

31 (4) To public officers, other than peace officers, of the United
32 States, other states, or possessions or territories of the United
33 States, provided that access to records similar to local summary
34 criminal history information is expressly authorized by a statute
35 of the United States, other states, or possessions or territories of
36 the United States when this information is needed for the
37 performance of their official duties.

38 (5) To any person when disclosure is requested by a probation,
39 parole, or peace officer with the consent of the subject of the local

1 summary criminal history information and for purposes of
2 furthering the rehabilitation of the subject.

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

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

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

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

17 If the local agency supplies the information pursuant to this
18 paragraph, it shall furnish a copy of the information to the person
19 to whom the information relates.

20 Any information obtained from the local summary criminal
21 history is confidential and the receiving public utility shall not
22 disclose its contents, other than for the purpose for which it was
23 acquired. The local summary criminal history information in the
24 possession of the public utility and all copies made from it shall
25 be destroyed 30 days after employment is denied or granted,
26 including any appeal periods, except for those cases where an
27 employee or applicant is out on bail or on his or her own
28 recognizance pending trial, in which case the state summary
29 criminal history information and all copies shall be destroyed 30
30 days after the case is resolved, including any appeal periods.

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

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

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

1 (10) Any city, county, city and county, or district, or any officer
2 or official thereof, if a written request is made to a local law
3 enforcement agency and the information is needed to assist in the
4 screening of a prospective concessionaire, and any affiliate or
5 associate thereof, as these terms are defined in subdivision (k) of
6 Section 432.7 of the Labor Code, for the purposes of consenting
7 to, or approving of, the prospective concessionaire’s application
8 for, or acquisition of, any beneficial interest in a concession, lease,
9 or other property interest.

10 Any local government’s request for local summary criminal
11 history information for purposes of screening a prospective
12 concessionaire and their affiliates or associates before approving
13 or denying an application for, or acquisition of, any beneficial
14 interest in a concession, lease, or other property interest is deemed
15 a “compelling need” as required by this subdivision. However,
16 only local summary criminal history information pertaining to
17 criminal convictions may be obtained pursuant to this paragraph.

18 Any information obtained from the local summary criminal
19 history is confidential and the receiving local government shall
20 not disclose its contents, other than for the purpose for which it
21 was acquired. The local summary criminal history information in
22 the possession of the local government and all copies made from
23 it shall be destroyed not more than 30 days after the local
24 government’s final decision to grant or deny consent to, or approval
25 of, the prospective concessionaire’s application for, or acquisition
26 of, a beneficial interest in a concession, lease, or other property
27 interest. Nothing in this section shall be construed as imposing
28 any duty upon a local government, or any officer or official thereof,
29 to request local summary criminal history information on any
30 current or prospective concessionaire or their affiliates or
31 associates.

32 (d) Whenever an authorized request for local summary criminal
33 history information pertains to a person whose fingerprints are on
34 file with the local agency and the local agency has no criminal
35 history of that person, and the information is to be used for
36 employment, licensing, or certification purposes, the fingerprint
37 card accompanying the request for information, if any, may be
38 stamped “no criminal record” and returned to the person or entity
39 making the request.

1 (e) A local agency taking fingerprints of a person who is an
2 applicant for licensing, employment, or certification may charge
3 a fee to cover the cost of taking the fingerprints and processing
4 the required documents.

5 (f) Whenever local summary criminal history information
6 furnished pursuant to this section is to be used for employment,
7 licensing, or certification purposes, the local agency shall charge
8 the person or entity making the request a fee which it determines
9 to be sufficient to reimburse the local agency for the cost of
10 furnishing the information, provided that no fee shall be charged
11 to any public law enforcement agency for local summary criminal
12 history information furnished to assist it in employing, licensing,
13 or certifying a person who is applying for employment with the
14 agency as a peace officer or criminal investigator. Any state agency
15 required to pay a fee to the local agency for information received
16 under this section may charge the applicant a fee sufficient to
17 reimburse the agency for the expense.

18 (g) Whenever there is a conflict, the processing of criminal
19 fingerprints shall take priority over the processing of applicant
20 fingerprints.

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

24 (i) It is not a violation of this article to include information
25 obtained from a record in (1) a transcript or record of a judicial or
26 administrative proceeding or (2) any other public record when the
27 inclusion of the information in the public record is authorized by
28 a court, statute, or decisional law.

29 (j) Notwithstanding any other law, a public prosecutor may, in
30 response to a written request made pursuant to ~~Section 6253 of~~
31 ~~the Government Code~~, *the California Public Records Act (Chapter*
32 *3.5 (commencing with Section 6250) of Division 7 of Title 1 of the*
33 *Government Code*), provide information from a local summary
34 criminal history, if release of the information would enhance public
35 safety, the interest of justice, or the public's understanding of the
36 justice system and the person making the request declares that the
37 request is made for a scholarly or journalistic purpose. If a person
38 in a declaration required by this subdivision willfully states as true
39 any material fact that he or she knows to be false, he or she shall
40 be subject to a civil penalty not exceeding ten thousand dollars

1 (\$10,000). The requestor shall be informed in writing of this
2 penalty. An action to impose a civil penalty under this subdivision
3 may be brought by any public prosecutor and shall be enforced as
4 a civil judgment. *A public prosecutor's case management database*
5 *in itself is not a "local summary criminal history," and nothing*
6 *in this subdivision prohibits a prosecutor from disclosing*
7 *electronically stored data that is not a compilation of an*
8 *individual's criminal history information pursuant to a valid*
9 *records request under the California Public Records Act.*

10 (k) Notwithstanding any other law, the Department of Justice
11 or any state or local law enforcement agency may require the
12 submission of fingerprints for the purpose of conducting summary
13 criminal history information record checks which are authorized
14 by law.

15 (l) Any local criminal justice agency may release, within five
16 years of the arrest, information concerning an arrest or detention
17 of a peace officer or applicant for a position as a peace officer, as
18 defined in Section 830, which did not result in conviction, and for
19 which the person did not complete a postarrest diversion program
20 or a deferred entry of judgment program, to a government agency
21 employer of that peace officer or applicant.

22 (m) Any local criminal justice agency may release information
23 concerning an arrest of a peace officer or applicant for a position
24 as a peace officer, as defined in Section 830, which did not result
25 in conviction but for which the person completed a postarrest
26 diversion program or a deferred entry of judgment program, or
27 information concerning a referral to and participation in any
28 postarrest diversion program or a deferred entry of judgment
29 program to a government agency employer of that peace officer
30 or applicant.

31 (n) Notwithstanding subdivision (l) or (m), a local criminal
32 justice agency shall not release information under the following
33 circumstances:

34 (1) Information concerning an arrest for which diversion or a
35 deferred entry of judgment program has been ordered without
36 attempting to determine whether diversion or a deferred entry of
37 judgment program has been successfully completed.

38 (2) Information concerning an arrest or detention followed by
39 a dismissal or release without attempting to determine whether the
40 individual was exonerated.

- 1 (3) Information concerning an arrest without a disposition
- 2 without attempting to determine whether diversion has been
- 3 successfully completed or the individual was exonerated.

O