

TECHNICAL ASSISTANCE: EMPLOYMENT AND CRIMINAL HISTORY REPORTING

Juvenile court records are not considered “criminal records” and generally speaking, juvenile records should not be reported or discovered when youth are searching for employment. Juvenile records should not be disclosed by the Department of Justice (DOJ) to licensing entities or directly to employers, and in most instances, employers should not ask job applicants about juvenile records. (Obviously, there are some careers where a juvenile or criminal history inquiry may be permitted, such as law enforcement, health care, financial services.) However, there will likely be instances where a juvenile record has mistakenly been turned over. Some employers rely on private companies to do background checks and they use courthouse record searches and other methods to find records that should not be available. Due to a lack of knowledge about juvenile records, there may be a lack of awareness that they should be confidential or mistakes made in interpreting them. For example, not understanding Deferred Entry of Judgment means no petition was sustained. But, once a juvenile record, accurate or inaccurate, is stored in a database, it may be discovered. Unfortunately, while youth do not need to disclose their juvenile records, if the record is inadvertently obtained, the employer could feel the youth was lying and ultimately choose not to hire them.

Below are statutory provisions that apply to employers and licensing bodies obtaining criminal and juvenile records. For a thorough discussion of this subject consider reviewing Chap. 13 “Employment” in the Pacific Juvenile Defender publication: “Collateral Consequences of Juvenile Delinquency Proceedings in California: A Handbook for Juvenile Law Professionals.”

GENERAL STATUTORY PROVISIONS

LABOR CODE § 432.7 DISCLOSURE OF CRIMINAL OR JUVENILE RECORDS INFORMATION BY APPLICANTS FOR EMPLOYMENT

...(a) (2) An employer, whether a public agency or private individual or corporation, shall not ask an applicant for employment to disclose, through any written form or verbally, 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 the juvenile court. An employer also shall not seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to 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 the juvenile court.

(3) For purposes of this section:

(A) “Conviction” includes a plea, verdict, or finding of guilt, regardless of whether a sentence is imposed by the court.

(B) “Conviction” does not include, and shall not be construed to include, any adjudication by a juvenile court or any other court order or action taken with respect to a person who is under the process and jurisdiction of the juvenile court.

2 CCR § 11017.1 CONSIDERATION OF CRIMINAL HISTORY IN EMPLOYMENT DECISIONS

...(c) Consideration of Criminal History after a Conditional Offer of Employment Has Been Made. Employers in California are prohibited from inquiring into, considering, distributing, or disseminating information regarding the following types of criminal history both after a conditional offer has been made and in any other subsequent employment decisions such as decisions regarding promotion, training, discipline, lay-off, and termination:

...(3) A conviction that has been judicially dismissed or ordered sealed, expunged or statutorily eradicated pursuant to law (e.g., juvenile offense records sealed pursuant to Welfare and Institutions Code section 389 and Penal Code sections 851.7 or 1203.45) or any conviction for which the person has received a full pardon or has been issued a certificate of rehabilitation

(4) 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 (Labor Code section 432.7);

STATUTORY PROVISIONS SPECIFIC TO CAREERS REQUIRING LICENSES/CERTIFICATIONS

BUS. & PROF. CODE § 7.5 “CONVICTION”; WHEN ACTION BY BOARD FOLLOWING ESTABLISHMENT OF CONVICTION MAY BE TAKEN; PROHIBITION AGAINST DENIAL OF LICENSURE ...

(a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt.

Bus. & Prof. Code § 480 Grounds for denial by licensing board

...(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

BUS. & PROF. CODE § 144(A) REQUIREMENT OF FINGERPRINTS FOR CRIMINAL RECORD CHECKS; APPLICABILITY

Notwithstanding any other law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks . Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation. (b) Subdivision (a) applies to the following:

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| (1) California Board of Accountancy. | (10) Respiratory Care Board of California. |
| (2) State Athletic Commission. | (11) Physical Therapy Board of California. |
| (3) Board of Behavioral Sciences. | (12) Physician Assistant Board. |
| (4) Court Reporters Board of California. | (13) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. |
| (5) Dental Board of California. | (14) Medical Board of California. |
| (6) California State Board of Pharmacy. | (15) California State Board of Optometry. |
| (7) Board of Registered Nursing. | (16) Acupuncture Board. |
| (8) Veterinary Medical Board. | (17) Cemetery and Funeral Bureau. |
| (9) Board of Vocational Nursing and Psychiatric Technicians of the State of California. | (18) Bureau of Security and Investigative Services. |

- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.
- (22) Structural Pest Control Board.
- (23) Contractors State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.
- (27) Podiatric Medical Board of California.
- (28) Osteopathic Medical Board of California.
- (29) California Architects Board, beginning January 1, 2021.
- (30) Landscape Architects Technical Committee, beginning January 1, 2022.
- (31) Bureau of Household Goods and Services with respect to household movers as described in Chapter 3.1 (commencing with Section 19225) of Division 8.

Penal Code § 11105 State summary of criminal history; Furnishing of information to specified entities (to fulfill their licensing, certification, or employment duties). This provision requires DOJ to provide criminal history information to entities, boards, govt. agencies, etc. that request these criminal history records for purposes of licensing/ certifying or hiring someone for a particular job. (In a letter dated December 21, 2010, DOJ confirmed to the Youth Law Center that juvenile records are not disclosed under these requests.)