REPORT OF THE

OFFICE OF THE AUDITOR GENERAL

TO THE

JOINT LEGISLATIVE AUDIT COMMITTEE

862.1

CHANGES NEEDED IN THE DEPARTMENT OF JUSTICE'S SUBSEQUENT ARREST NOTIFICATION PROGRAM

AUGUST 1979

California Legislature

Joint Legislative Audit Committee

GOVERNMENT CODE SECTION 10500 et al

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August 14, 1979 862.1

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report entitled, "Changes Needed in the Department of Justice's Subsequent Arrest Notification Program."

The report identifies various procedural weaknesses within the department which have resulted in practices which are contrary to law and which contribute to program inefficiencies. Furthermore, the report specifies that the department could receive an additional $299,000 annually by charging a fingerprint processing fee for peace officer applicants.

The Auditor General recommends specific procedural changes which the Department of Justice should consider in correcting the problems identified in the report. The auditors are William M. Zimmerling, CPA, Supervising Auditor; Thomas A. Britting; Melanie M. Kee; and Albert M. Tamayo. Support staff is Lucy Chin.

Respectfully submitted,

Richard Robinson

RICHARD ROBINSON
Member, 72nd District
Chairman, Joint Legislative
Audit Committee

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SUMMARY

The Department of Justice (DOJ), through the constitutional office of the Attorney General, provides a wide range of legal and law enforcement services. One of these services is to supply information summarizing the criminal histories of applicants seeking licenses, certifications, or employment to authorized state and local agencies. As an extension of this service, DOJ notifies agencies if the individuals they license, certify, or employ are subsequently arrested. To receive these subsequent arrest notifications, the agencies must demonstrate both a right to know and a need to know.

Although this extended service is essential to agencies in licensing, certifying, and employing individuals, various procedural weaknesses have resulted in practices which are contrary to law and which contribute to program inefficiencies. Specifically, we found these problems:

- In our sample of 172 notifications, approximately 72 percent were sent to agencies that did not meet the need to know criterion. According to the Legislative Counsel, this practice is contrary to law.

- Most of the notifications are sent to agencies which no longer have use for them. Reviewing and either storing or destroying these notifications creates unnecessary work for the agencies. Moreover, DOJ's procedures for maintaining and storing applicant records increase the time and cost of conducting identifications.

- DOJ has not adequately audited agencies that receive summary criminal history information; consequently, some agencies fail to properly secure or control this information.

We also found that DOJ could receive an additional $299,000 annually by charging law enforcement agencies a fee for processing the fingerprints of peace officer applicants.

We recommend that DOJ (1) revise its program procedures to ensure that arrest information is sent only to agencies with a need to know, (2) adequately audit agencies receiving criminal history information, and (3) charge law enforcement agencies fees for processing fingerprints for peace officer applicants.

INTRODUCTION

In response to a request by the Joint Legislative Audit Committee, the Office of the Auditor General reviewed certain operations within the Department of Justice (DOJ). We examined the department's non-criminal identification program which includes the subsequent arrest notification program. This audit was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

Background

The Department of Justice, through the constitutional office of the Attorney General, provides a wide range of legal and law enforcement services. Since 1972, DOJ has comprised the Office of the Attorney General and the Division of Law Enforcement (DLE). DLE renders identification, investigation, intelligence, communication, and criminalistic services statewide. In fiscal year 1978-79, DLE received $49.5 million of the $90.5 million DOJ budget.

Section 11105 of the Penal Code requires DOJ to provide summary criminal history information which assists specifically authorized agencies in carrying out their licensing, certification, and employment duties. The document containing the summary criminal history information is called a rapsheet.

Rapsheets include an individual's name and aliases, general physical description, arrest record, and, if available, disposition of criminal charges. A sample rapsheet is depicted in Appendix A.

For over 40 years, the Identification and Information Branch (IIB) within DOJ has provided this rapsheet service through its non-criminal identification program. IIB creates and processes records for identification of both criminals and non-criminals and then forwards rapsheets to agencies requesting them.

Section 11105 of the Penal Code also provides that DOJ may authorize agencies to receive criminal history information only when the agencies establish both the right to know and the need to know. The right to know criminal history information relates to an agency's legal authority, while the need to know concerns the official purpose for requesting the information. DOJ defines and provides criteria for determining the right and the need to know and also audits agencies receiving rapsheets to ensure that they meet the criteria.

DOJ provides two levels of service to agencies which request criminal history information on applicants for licenses, certificates, or employment. In the first level of service, DOJ processes fingerprint cards to determine if an applicant has a

criminal history. Once processed, the applicant's fingerprint card and any criminal history information are sent to the requesting agency. DOJ sends no further rapsheets on these applicants. For this service, DOJ charges a $6.10 fee which the agencies may recover from applicants. For fiscal year 1978-79, $2.4 million of IIB's estimated $19.7 million budget came from fees charged for fingerprint processing.

In the second level of service, DOJ not only provides initial rapsheets to agencies but also provides subsequent arrest notifications, known as rapbacks, whenever the individuals are later arrested. Rapbacks are updated rapsheets automatically provided to agencies. DOJ charges the agencies $0.37 for each rapback it sends.

Agencies, except law enforcement agencies, must contract with DOJ for the rapback service. The contracts require the agencies to notify DOJ when they no longer license, certify, or employ the individuals. DOJ continues to send rapbacks until the agencies specify that they are no longer interested in the individuals or until the records are purged from DOJ files. At the time of our audit, 58 agencies had contracted with or were in the process of contracting with DOJ for rapback services. Appendix B lists these agencies.

DOJ has an unwritten policy which exempts law enforcement agencies from certain provisions of the program. Specifically, DOJ does not charge these agencies the $6.10 fee for rapsheets on peace officer candidates; neither does DOJ require the $0.37 fee for rapbacks on peace officers. Also, DOJ does not require law enforcement agencies to contract to receive the rapback service. Instead, it automatically sends rapbacks to these agencies. But as with contract agencies, law enforcement agencies should notify the department when they are no longer interested in individuals. Approximately 1,200 law enforcement agencies are eligible to receive rapbacks from DOJ. These agencies are summarized in Appendix C.

Scope of Audit

In conducting this audit, we concentrated on the non-criminal identification program. Specifically, we reviewed the rapback program and the fees for non-criminal identification. We analyzed statutes and DOJ regulations, interviewed department and other agency staff, and reviewed documents pertinent to the non-criminal identification program.

We reviewed all rapbacks which DOJ sent to agencies during the four-week period from April 16 through May 14, 1979. We then assembled data from the rapbacks sent on 1,112 individuals during that period. For a more detailed analysis, we selected from this population a random sample of 124 individuals;

this sample resulted in a review of 172 rapbacks sent to 51 different agencies. Of those agencies, we visited the 6 agencies receiving the largest number of rapbacks and telephoned the remaining 43 to determine their need for and management of the rapbacks they had received.* DOJ sent two of the rapbacks in our sample to agencies that were no longer in existence.

* Although we telephoned 43 agencies, one failed to respond to our survey.

AUDIT RESULTS

SUBSEQUENT ARREST NOTIFICATION PROGRAM NEEDS REVISION

Although the Department of Justice's subsequent arrest notification or rapback program provides a necessary service, the program needs substantial revision. DOJ sends rapbacks to agencies which do not have a need to know such information. According to the Legislative Counsel, this practice is contrary to law. Additionally, DOJ's retention of unnecessary records creates inefficiencies in its identification program.

The rapback program is intended to apprise agencies when their licensees, registrants, or employees are arrested. Agencies can use this information as a basis for further investigation if the individuals were arrested for crimes which would affect their status with the agencies.

To receive rapbacks, agencies must exhibit both a right and a need to know the information. As provided in Section 11105 of the Penal Code, the right to know is the legal authority, granted by statute or court order, for a person to have access to criminal history information. Section 11105 also includes a list of agencies who have a right to know. The need to know is the official purpose for which the criminal history information may

be requested and used. The need to know ceases when the individual is no longer licensed, certified, or employed by the agency.

Inappropriate Program Procedures

Under DOJ's identification program, when an agency submits an applicant's fingerprints, DOJ verifies the applicant's identity and returns the fingerprint card to the agency along with any criminal history information. If the agency also receives rapback service, DOJ retains the fingerprint card. Then if the individual is subsequently arrested, DOJ is able to notify the agency based on the data on the fingerprint card. If the individual has applied to several agencies which receive rapback service, a rapback will be sent to each agency.

DOJ will continue to notify the agencies every time the individual is arrested until the agencies inform DOJ they are no longer interested or until the period for retaining applicant records has passed. DOJ retains applications for licenses to carry concealed weapons, destructive devices, machine guns, sawed-off shotguns or tear gas for five years; it retains employment records until the applicant has reached age 67; and it keeps all other applications for licenses or certificates until the applicant is age 80.

Rapbacks Are Sent to Agencies Which Have No Need to Know

DOJ sends rapbacks to agencies without first verifying their need to know this information. As detailed in the Introduction, we selected a random sample of 124 individuals, on whom DOJ sent 172 rapbacks, to determine whether the agencies were interested in the individuals. Seventy-two percent of the 172 rapbacks in our sample were sent to agencies which had no need to know this information. For example, in each of the following instances DOJ sent the agency a rapback on the individual during our survey period:

> An individual applied for a license to one agency over 30 years ago and to a second agency 27 years ago. DOJ has mailed seven rapbacks to the first agency and six to the second, yet neither agency could document that the individual had ever applied.
>
> An individual applied to an agency for a salesman's license in 1961. During the subsequent 18 years, DOJ sent the agency 37 rapbacks. Thirty of these notifications were sent after the individual's license had expired in 1964.
>
> For one individual who applied to an agency for a salesman's license in 1964, DOJ has since sent the agency 24 rapbacks. All of these rapbacks were sent after the license had expired in 1965.

Rapbacks are sent to agencies which have no need to know because DOJ automatically retains applicant fingerprint cards which are the basis for sending rapbacks. This procedure is inappropriate because many applicants are never certified, licensed, or employed. In fact, 62 of the 172 rapbacks in our

sample (36 percent) were sent to agencies which had no interest in the individual beyond initial application or which had no record of the individual.

Furthermore, DOJ continues to send rapbacks on individuals after their relationships with the agencies have ceased. Sixty-one rapbacks (36 percent) within our sample were sent to agencies which had an interest in the individual in the past, but not at the time the last rapback was sent. Only 49 (28 percent) of the sample rapbacks were sent to agencies which were currently interested in the individuals. In these 49 instances, 12 of the rapbacks received were used by the agencies to initiate investigative action.

We also found that for 30 percent of the individuals in our sample, DOJ sent rapbacks to several agencies. In one case, DOJ sent rapbacks on one individual to five agencies. Only one agency had an interest in this individual at the time the last rapback was sent.

The primary cause of unnecessary rapbacks is the agencies' failure to notify DOJ when their relationships with the applicants have ended. DOJ's rapback contract requires that agencies notify the department when they have no further interest in an individual. This requirement is ineffective. None of the 48 agencies which responded to our survey notified DOJ as soon as

the relationship with the individual ended. Only six percent notified DOJ when they had received the first rapback after their contact with the applicant had ended. Since the agencies do not notify DOJ, the department is regularly sending rapbacks to agencies which have no relationships with the individuals and thus no need to know subsequent arrest information about them.

The Legislative Counsel stated, in an opinion dated May 31, 1979, that although agencies do have a basis to be interested in an applicant's criminal history, such information cannot be provided if the agency does not have a current relationship with the individual. This opinion, which is reprinted in Appendix D, reads in part:

> [Furnishing of subsequent arrest information] is contrary to law when the state agency receiving the record has no further interest in the subject of the record (e.g., a person is no longer an applicant for licensure or a person is no longer a licensee).

Since rapbacks are routinely sent to agencies which have no interest in the individual, the rapback program violates statute.

Procedural Inefficiencies

The rapback program is inefficient in that most of the rapbacks are sent to agencies which have no use for them. More

importantly, DOJ's procedures for administering the rapback program increase the time and cost required to conduct criminal identifications.

As mentioned earlier, 72 percent of the rapbacks in our sample were sent to agencies which had no interest in the individual and therefore no use for the rapbacks. In addition to expending DOJ resources, this procedure increases the agencies' workload since they must review and either destroy or store every rapback received. Forty percent of the 48 agencies responding to our survey stored rapbacks indefinitely, even if they had no interest in the individual.

Procedures used in the rapback program also cause inefficiencies in the criminal identification program, one of DOJ's primary responsibilities. DOJ retains some applicant records unnecessarily, keeps applicant records for long periods of time, and stores them with criminal history records. These procedures increase the time and cost required to process identifications.

To identify an individual, DOJ staff must search at least two of three large file systems. The first system is the Soundex file, a phonetic name index; the second system contains

all the fingerprint cards submitted to DOJ; and the third contains all the criminal history folders. Applicant and criminal records are commingled within these files.

The fingerprint file contains approximately 6 million cards, about half of which are applicant prints. The criminal history file contains over 3 million records; about 900,000 of these are applicant records.*

The problem of file size is compounded by the length of time DOJ keeps applicant records. DOJ retains employment records until the individual reaches age 67, and retains all other applicant records until the individual reaches age 80.

As explained in the preceding section, many of the fingerprint cards which DOJ retains are unnecessary because some applicants are never licensed, certified, or employed by the agencies. Other records are kept on individuals whose relationships with the agencies have ceased.

By including the applicant records with the criminal records, DOJ almost doubles the size of each of the three files it must search to process identifications. This procedure increases the time required to conduct both criminal and applicant identifications. It also increases the cost of creating, storing, maintaining, and purging the files. Moreover,

*When a second applicant identification is requested on an individual, DOJ staff create a folder which contains all documents pertaining to this individual. This folder is filed with the criminal history records, regardless of whether it contains any criminal data.

the number of fingerprint cards is rapidly increasing. In fiscal year 1977-78, 339,000 fingerprint cards were added to DOJ's existing files.

Furthermore, the increased cost of maintaining applicant records is not adequately reimbursed by the $0.37 fee DOJ charges to agencies for rapback service. Athough this fee includes costs for staff time, postage, paper, equipment, automated programming, and administration, it does not reimburse DOJ's costs for the initial creation, storage, or maintenance of files. Additionally, the fee has not been reevaluated since 1977.

Insufficient Attention to Audit Function

California Penal Code Sections 11075 through 11081 make the Attorney General responsible for the security and privacy of criminal history information in California. The California Administrative Code mandates that DOJ shall conduct audits of agencies receiving criminal history information to ensure compliance with all state regulations. DOJ, however, has not adequately audited agencies receiving criminal history information.

DOJ created the Criminal Record Security Unit (CRSU) in 1974 to conduct audits of agencies receiving criminal history information. The unit was designed to provide the technical assistance and oversight necessary to prevent illegal access to criminal history information. DOJ developed regulations for the security and use of this information at the agency level, and then offered field training programs in security procedures. DOJ is now auditing the agencies to verify compliance with regulations.

DOJ originally intended the CRSU to audit each agency receiving criminal history information at least once every three years. As of April 15, 1979, DOJ had audited 517 or 92 percent of the law enforcement agencies receiving criminal history information but had audited only 50 or 3 percent of the 1,695 non-law enforcement agencies receiving such information. DOJ had audited only 1 of 97 state agencies receiving criminal history information. DOJ has emphasized audits of law enforcement agencies because these agencies further disseminate the data among themselves.

We visited six agencies which received 65 percent of the rapbacks in our sample. We observed agency security of rapbacks and administered the questionnaire DOJ audit staff uses

to determine compliance with regulations. We found that although the agencies are complying with most of the requirements, more oversight from DOJ is warranted.

For example, only three of the six agencies had adopted the required written control and security regulations, and none of the agencies promptly notified DOJ when they were no longer interested in an individual. Further, none of the 42 agencies we telephoned promptly notified DOJ when they were no longer interested in individuals, and several of these agencies indicated they were either unaware of this requirement or had no policy regarding it. The physical security of rapbacks at five of the six agencies we visited was adequate, but at one agency rapbacks were temporarily stored in boxes in a room openly accessible to janitors. These conditions indicate a need for more oversight and technical assistance from DOJ.

CONCLUSION

Although the rapback program provides a needed service, the program needs substantial revision. In our sample of rapbacks, DOJ sent 72 percent of the rapbacks to agencies which were no longer interested in the individuals. According to the Legislative Counsel, this practice is contrary to law. Furthermore, DOJ retains unnecessary records; this procedure adversely affects its identification program.

RECOMMENDATION

We recommend that the Department of Justice retain applicant records of only those individuals who are licensed or certified by implementing these procedures:

(1) When an agency requests an applicant's identification, DOJ should return the fingerprint card with any criminal history information to the agency. DOJ would keep no record of the individual at this time.

(2) If the applicant is licensed or certified, the agency would return the fingerprint card to DOJ. The agency would note on this card when the license or certificate would expire. DOJ would use this card as a basis for forwarding rapbacks.

(3) DOJ would purge these cards and stop sending rapbacks on the expiration date indicated on the fingerprint cards unless the agency notified DOJ of renewal or extension. In this manner, DOJ would ensure that it was forwarding rapbacks only to agencies which had an active interest in the individual.

We also recommend that the Department of Justice take the following action:

- Eliminate rapbacks on employment applicants because even if the individual was hired, there is no practical way for DOJ to determine if a relationship still existed at the time the individual was arrested. If an agency needs this information, it may request a new rapsheet from DOJ.

- Reevaluate the fee charged for rapbacks.

- Increase compliance audits of agencies receiving criminal history information.

FEE POLICY FOR PEACE OFFICER APPLICANTS NEEDS REASSESSMENT

DOJ could receive an additional $299,000 annually by charging law enforcement agencies a fee for processing fingerprint cards for peace officer applicants. Although DOJ has the statutory authority to charge this fee and charges other agencies for similar services, it does not charge law enforcement agencies fees for peace officer applicants.

Section 11105 of the Penal Code provides that when DOJ provides criminal history information, it may recover its costs by charging the agency requesting this information a fee. DOJ determined that the fee for fiscal year 1978-79 would be $6.10 for each applicant fingerprint card it processed. This fee reimburses DOJ for wages and salaries, operating expenses, and administrative costs for the service.

DOJ exempts peace officer applicants from the fee although agencies, including law enforcement agencies, are charged for all other applicants. For fiscal year 1978-79, DOJ anticipated about $2.4 million in fingerprint processing fees. If DOJ had charged the $6.10 fee for the 49,000 peace officer applicants during this year, it could have received an additional $299,000.

DOJ has no documented policy exempting peace officers from this fee. This exemption appears to be a tradition carried forward from a time when law enforcement agencies were statutorily exempt from paying the fee. In 1971, Section 11105 was amended, specifically exempting peace officers from fees. However, in 1975, one of the Legislature's amendments to Section 11105 enabled DOJ to charge fees to all agencies seeking criminal history information. The peace officer exemption was omitted.

Law enforcement agencies may recover these fees from peace officer applicants. Section 11105 allows agencies which pay fees to DOJ for criminal history information to seek reimbursement from the applicants. Thirty-five of 39 agencies (90 percent) which responded to our survey indicated that they charge applicants for the fee.

CONCLUSION

DOJ could receive about $299,000 in revenue by charging law enforcement agencies for processing the fingerprint cards of peace officer applicants.

RECOMMENDATION

We recommend that DOJ charge law enforcement agencies the $6.10 fee for processing peace officer applicant fingerprint cards.

Respectfully submitted,

for Harold L. Turner

THOMAS W. HAYES
Acting Auditor General

Date: August 10, 1979

Staff: William M. Zimmerling, CPA, Supervising Auditor
Thomas A. Britting
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State of California
Department of Justice
George Deukmejian
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August 8, 1979

Mr. Thomas W. Hayes
Acting Auditor General
Office of the Auditor General
925 "L" Street, Suite 750
Sacramento, California 95814

Re: Response to Auditor General's Report "Changes Needed in the Department of Justice's Subsequent Arrest Notification Program"

Dear Mr. Hayes:

The Department of Justice agrees in principle with two of the recommendations made by the Auditor General and disagrees with the other two. The Department does feel that further study is required to determine if the specific solutions proposed are cost effective.

The Department agrees that every effort must be made to ensure that criminal history records are sent only to agencies having both a right and a need to this information. The Department has had discussions in the past with agencies contracting for subsequent arrest notifications on ways to ensure that information is sent on only those subjects currently of interest to them. A reporting system similar to disposition information on criminal charges was discussed but rejected by the contract agencies because of cost.

The solution proposed by the Auditor General of returning all applicant cards with the resubmission of those actually licensed or certificated would work, but would be quite costly for both the contract agencies and for the Bureau of Criminal Identification (BCID).

Most applicant prints searched in BCID files do not have existing records. When these prints are resubmitted, the processing by BCID would be virtually the same as for the original submission, and, hence, equally costly. The print would have to be re-searched in the name index file and, if not found, the classification verified and a search made in the fingerprint file. This process of searching our fingerprint files again after the resubmission of the prints would be necessary to avoid the creation of double records in BCID files.

There would also be significant additional costs to the contract agencies to enter purge dates and to resubmit the fingerprint cards to BCID.

A concentrated training and audit effort with contract agencies to notify BCID of subjects no longer of concern to them can be equally effective and at significantly lower overall cost. Other solutions are possible and the Department would like to investigate these options in greater depth before adopting the solution proposed by the Auditor General.

On the second recommendation, the Department agrees that auditing and training of applicant agencies is necessary and appropriate. In fact, the schedule established by the Criminal Record Security Unit calls for all state applicant agencies to be audited this fiscal year. Agencies with contracts for subsequent arrest contracts will be visited first and necessary training afforded their employees. It should be noted that Criminal Record Security Unit has but four employees to perform all of its function, of which auditing and training is but a part. First attention had to be given to criminal justice agencies which are by far the largest volume users of criminal history information.

The Department disagrees with the third recommendation that law enforcement agencies be charged for the processing of the applicants for peace officer positions. This would merely transfer the cost to the taxpayer from one level of government to another, and add to the cost the extra expense of collecting, transmitting, accounting, and depositing the funds. It is clearly in the public interest not to charge for processing peace officer applicants.

The fourth recommendation is that the Department discontinue rapback service on employment applicants. The Department disagrees with this recommendation as it is of critical importance that the criminal activity of persons employed in the public sector and in nuclear power facilities be brought to the attention of the hiring agency. The solution proposed by the Auditor General of periodically resubmitting fingerprint cards is simply not cost effective. Only a relatively small number of employees will be arrested, but to be certain, each agency would be required to resubmit fingerprint cards periodically on 100% of their employees. It would be impossible to pass this cost on to the employee, and it could not be absorbed by the agencies or by BCID. An increased training and audit program appears to be the more appropriate solution to the problem identified by the Auditor General.

Very truly yours,

Michael Franchetti

Michael Franchetti
Chief Deputy

ds

APPENDIX A

SAMPLE RAPSHEET

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
BUREAU OF IDENTIFICATION
P. O. BOX 13417, SACRAMENTO

The following CII record, NUMBER M W BRO GRN 5-10 180 **IS FOR OFFICIAL USE ONLY**

INDIVIDUAL'S NAME

FBI #
SS #
DL #

ARRESTED OR RECEIVED	DEPARTMENT AND NUMBER	NAME	CHARGE	DISPOSITION
7-10-66	SO Santa Rosa	(NAME)	602 W&I Damaging Residential Prop.	
9-17-67	PD San Francisco	(NAME)	E/R Nev SO VIOLS OF 270PC OMITTING PROVIDE FOR ONE CHILD	
8-30-69	BUREAU OF COLLECTION & INVESTIGATIVE SERVICES	(NAME)	APPLICANT	
6-14-70	DMV	(NAME)	APPLICANT	
10-12-72	SO Nevada City	(NAME)	270 PC	3 yrs Prob.
11-1- 73	PD Petaluma	(NAME)	415 PC DP	No Compl.
4-17-79	SO Santa Rosa	(NAME)	B/Warr #8802-C Vio Prob- 451 PC, ATT ARSON	

Based on fictitious information.

ENTRIES INDICATED BY ASTERISK (*) ARE NOT VERIFIED BY FINGERPRINTS IN CII FILES.

△ osp

APPENDIX B

LIST OF AGENCIES CONTRACTING WITH THE DEPARTMENT OF JUSTICE FOR RAPBACKS

Alcoholic Beverage Control, State Department of

Baldwin Park Unified School District

Banking, State Department of (Contract Pending)

Bakersfield, California State College at

Chiropractic Examiners, State Board of

Community Colleges, California Credentials Section

Consumer Affairs, State Department of

- Accountancy, Board of
- Animal Health Technician Examining Committee
- Athletic Commission
- Collection and Investigative Services, Bureau of
- Cosmetology, Board of
- Dental Examiners, Board of
- Employment Agencies, Bureau of
- Fabric Care, Board of
- Funeral Directors and Embalmers, Board of
- Medical Quality Assurance, Board of
- Optometry, Board of
- Osteopathic Examiners, Board of
- Pharmacy, Board of

Veterinary Medicine, Board of Examiners (Contract Pending)

Vocational Nurse and Psychiatric Technician Examiners, Board of

Controller's Office, State of California

Corporations, State Department of

Dominguez Hills, California State College at

Education, State Department of

Child Development, Office of*

Teachers Preparation and Licensing, Commission for

Empire Union School District

Fairview State Hospital

Fremont Unified School District

Fullerton, California State University at

Gardena, City of

Health, State Department of, Social Services Division

Horse Racing, State Board of

Housing and Community Development, State Department of

Humane Officers and Societies, California Superior Courts**

Insurance, State Department of

Kern County Housing Authority

Los Angeles, California State University at

Long Beach, California State University at

Modesto City Schools

Motor Vehicles, State Department of

Northridge, California State University at

Pacific Gas and Electric Company

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*DOJ sends rapbacks to this agency pursuant to Health and Safety Code Section 1522.

**DOJ sends rapbacks to this agency pursuant to Civil Code Section 607.

Palo Alto Unified School District

Pomona, California State University at

Real Estate, State Department of

Sacramento Municipal Utility District

Sacramento, California State University at

San Bernardino, California State College at

San Francisco, California State University at

San Gabriel School District

San Jose, California State University at

Savings and Loan, State Department of

Secretary of State's Office, California

Social Services, State Department of; includes county welfare departments (Contract Pending)

Sonoma, California State College at

Stanislaus, California State College at

Vallejo, City of, Director of Personnel and Labor Relations

SOURCE: List of Contract Agencies Retaining Applicant Fingerprints, DOJ, May 1979.

APPENDIX C

SUMMARY OF LAW ENFORCEMENT AGENCIES ELIGIBLE TO RECEIVE RAPBACKS WITHOUT CONTRACTS*

Police departments	415
County sheriff's offices	58
County probation departments	58
District Attorneys and Public Defenders (by county)	58
University of California (by campus)	9
California State University (by campus)	19
Department of Corrections	1
Department of Fish and Game	1
Department of Forestry	1
Department of Justice	1
California Youth Authority	1
California Highway Patrol	1
State Police	1
City Attorney's Office	250-300**
California Courts--Superior, Municipal, and Justice	250-300**
	1124-1224

*This information was provided by DOJ and is unaudited.
** Figures are approximate.

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

KENT L. DECHAMBEAU
STANLEY M. LOURIMORE
EDWARD F. NOWAK
EDWARD K. PURCELL

JERRY L. BASSETT
HARVEY J. FOSTER
ROBERT D. GRONKE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKEY
TRACY O. POWELL, II
RUSSELL L. SPARLING
JOHN T. STUDEBAKER
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
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Sacramento, California
May 31, 1979

Mr. Thomas W. Hayes
Office of the Auditor General
925 L Street, Suite 750
Sacramento, CA 95814

Criminal Records - #7481

Dear Mr. Hayes:

FACTS

When the Department of Justice furnishes a criminal record to a state agency under paragraph (10) of subdivision (b) of Section 11105 of the Penal Code, it also furnishes notification of any new arrest[1] to the agency under the following circumstances:[2]

(1) When the agency submits a "contract" to receive subsequent arrest information. The contract states the purposes for which the information is needed and states that the agency ceases to be entitled to receive criminal history

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1 Hereinafter referred to as "subsequent arrest information."

2 A Department of Justice memo you have provided, dated January 1978, specifically refers only to record retention periods. You have asked us to assume that the retention periods stated are the periods for which subsequent arrest information is provided, except as described below.

information on applicants when the individual is no longer licensed or employed by the agency, and that the agency will notify the Bureau of Identification, in writing, when this fact occurs. However, the Department of Justice sends arrest information to agencies which are no longer interested in the applicants until the agencies notify the department, because such notifications are not always made until after the information is sent to the agencies. Applicant fingerprint cards submitted by state agencies with whom the Department of Justice has a subsequent notifications contract will be retainable until the subject reaches age 80.[3]

(2) To law enforcement agencies on sworn and non-sworn personnel. Law enforcement employee records are purgeable when the subject reaches age 70 and all other purge criteria are met. Local agencies[4] are asked to notify the Bureau of Identification of those applications which do not result in employment.

(3) To agencies handling the application for licenses discussed below. Records maintained solely because of applicant entries will be stripped of criminal entries when all criminal charges are purgeable. Records will not be stripped until contributing local agencies are notified.

A. Zero Retention Period--Applicant clearance only requests.

B. Five-Year Retention Period--Applications for the following licenses or permits are purgeable five years after the date of expiration or revocation of the license or permit.

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3 You have informed us that this may be changed to age 67.

4 You have not asked us to render any opinion respecting furnishing of records to local agencies.

1. License to carry a concealed weapon.

2. Destructive device permit.

3. Machine gun permits or license.

4. Sawed-off shotgun permit or license.

5. Tear gas permit or license.

Any application for a license or permit which is refused will be retained for a five-year period. If several applications are on the rap sheet, the five-year retention period shall extend from the date of expiration or revocation of the last license application.

QUESTION

Is the requesting or furnishing of subsequent arrest information contrary to, or required by law?

OPINION

There is no statutory requirement for the furnishing of subsequent arrest information. Such furnishing is contrary to law when the state agency receiving the record has no further interest in the subject of the record (e.g., a person is no longer an applicant for licensure or a person is no longer a licensee).

ANALYSIS

Section 11105 of the Penal Code reads, in pertinent part, as follows:[5]

"11105. (a)(1) The Department of Justice shall maintain state summary criminal history information.

"(2) As used in this section:

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[5] See similar Section 13300 re local agencies.

"(i) 'State summary criminal history information' means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

"(ii) 'State summary criminal history information' does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

"(b) The Attorney General shall furnish state summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 [6] and of Section 432.7 of the Labor Code shall apply:

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6 Relates to conviction of crime as grounds for license denial.

* * *

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

* * *"

The aforementioned Section 432.7 of the Labor Code reads, in part, as follows:

"432.7. (a) No employer whether a public agency or private individual or corporation shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention which did not result in conviction, or information concerning a referral to and participation in any pretrial or posttrial diversion program, nor shall any employer 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 of arrest or detention which did not result in conviction, or any record regarding a referral to and participation in any pretrial or posttrial diversion program. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking 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.

* * *

"(d) Persons seeking employment as peace officers or for positions in law enforcement agencies with access to criminal offender record information or for positions with the Division of Law Enforcement of the Department of Justice are not covered by this section.

"(e) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

"(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

"(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

"(f) (1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal 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 which 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 such information.

"(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received

therefrom pertaining to an arrest or detention or proceeding which 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 such information.

"(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding which did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or posttrial diversion program, shall receive or possess such information.

"(g) 'A person authorized by law to receive such information', for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by such employment to receive, analyze, or process criminal offender record information.

"(h) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

* * *" (Emphasis added.)

Thus, new arrests are specifically exempted from the prohibitions of Section 432.7, and the Department of Justice is not required to delete arrest records from summary criminal history information. Similarly, law enforcement applicants are not protected by this section.

It follows that, for purposes of implementing a statute, summary criminal history information may be furnished which may, without violating Section 432.7 and Section 11105, contain arrest information.

Furthermore, if required for purposes of implementing a statute, we think, subsequent arrest information could be provided.

There are few instances where the existence of an arrest would govern the action of an agency to the extent that it would be based upon a statutory requirement or exclusion based upon "specific criminal conduct."

Numerous licensing agencies do have a basis to be interested in an arrest of a person, not because of the potential effect of an arrest per se, but because such arrest may develop into a conviction of a crime which may, in a given case, be of a kind which would place the licensing agency under an obligation to deny, suspend or revoke a license (see, e.g., Secs. 490, et seq., and 5100, B.& P.C.; Sec. 56188, F.& A.C.; Sec. 11503, Veh. C.; Sec. 1805, Ins. C.; 4 Cal. Adm. Code 1489; Sec. 8214.1, Gov. C.; Secs. 44010 and 44345, Ed. C.).

It is obvious, however, that such provisions provide a basis for continued interest in arrest records by a licensing agency only so long as the subject of the record continues in a status as an active licensee or applicant.

Specific provisions relative to arrests, per se, deal only with reports to a parent of a drug-related arrest of a minor (Sec. 48922, Ed. C.), and notification to a school of an employee's sex-related arrest (Secs. 291, 291.1, Pen. C.).

Thus, we conclude that there is no statutory requirement for the furnishing of subsequent arrest information, and such furnishing is contrary to law when the state agency receiving the record has no further interest in the subject of the record (e.g., a person is no longer an applicant for licensure or a person is no longer a licensee).

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Ben E Dale
Ben E. Dale
Deputy Legislative Counsel

BED:mcj

cc: Honorable Richard Robinson, Chairman
Joint Legislative Audit Committee

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
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