
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 3235 **Hearing Date:** June 25, 2024
Author: Bryan
Version: June 12, 2024
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Fingerprint rollers and custodians of records*

HISTORY

Source: Department of Justice

Prior Legislation: None applicable

Support: California Public Defenders Association; Californians for Safety and Justice;
Community Legal Services of East Palo Alto; East Bay Community Law Center;
Legal Aid at Work; Roots & Rebound

Opposition: None known

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to give the California Department of Justice (DOJ) discretion to determine if conviction of a criminal offense bears upon a person's ability to perform the duties and responsibilities of a fingerprint roller or custodian of records with honesty and integrity.

Existing law requires the DOJ to establish, implement, and maintain a certification program to process fingerprint-based criminal background clearances on individuals who roll applicant fingerprint impressions, manually or electronically, for non-law enforcement purposes. Except as specified, no person shall roll fingerprints for non-law enforcement purposes unless certified. (Penal Code § 11102.1 (a).)

Existing law exempts from certification the following persons if they have received training pertaining to applicant fingerprint rolling and who have undergone a criminal offender record information background investigation:

- a) Law enforcement personnel and state employees; and,
- b) Employees of a tribal or a tribal gaming operation, provided that that the fingerprints are rolled and submitted to the DOJ for the purposes of compliance with a tribal-state compact. (Penal Code § 11102.1 (a)(2)(A)(B).)

Existing law states that shall not accept fingerprint impressions for non-law enforcement purposes unless they were rolled by an individual unless they have been certified or exempted. Penal Code § 11102.1 (a)(3).)

Existing law provides individuals who roll applicant fingerprint impressions, manually or electronically, for non-law enforcement purposes must submit to the DOJ fingerprint images and related images along with the appropriate fees, as specified. (Penal Code § 11102.1(b).)

Existing law requires the DOJ to retain fingerprint impressions for subsequent arrest notification, as specified.

Existing law establishes criteria that individuals must meet in order to be certified as a fingerprint roller, including age of at least 18 years; legal residency; satisfactory completion of a notarized written application to determine fitness to roll fingerprints; and personal attributes including honesty, credibility, truthfulness, and integrity. (Penal Code § 11102.1. (d).)

Existing law states that DOJ shall not certify any person convicted of any felony, or any other offense that involves both moral turpitude, dishonesty or fraud, and bears upon the applicant's ability to perform the responsibilities of a fingerprint roller. (Penal Code § 11102.1 (f).)

Existing law states a number of bases upon which the DOJ may refuse to certify a person or revoke or suspend the certification of any fingerprint roller upon any of the following:

- a) Substantial or material misstatement or omission in the application submitted to DOJ;
- b) Conviction of a felony or awaiting adjudication for a felony or lesser offense involving moral turpitude, or a lesser offense incompatible with the duties of a fingerprint roller;
- c) Revocation, suspension, or denial of a professional license, if the revocation, suspension or denial was for misconduct, dishonesty or any cause substantially related to the duties of a fingerprint roller;
- d) Failure to discharge fully and faithfully any of the duties required of a fingerprint roller;
- e) Liability for damages in any suit grounded in fraud, misrepresentation, or in violation of the state regulatory laws, or in any suit based upon a failure to discharge fully and faithfully any of the duties required of a fingerprint roller;
- f) False or misleading advertising;
- g) Commission of any act involving dishonesty fraud or deceit with the intent to substantially benefit the fingerprint roller or another, or to substantially injure another; and,
- h) Failure to submit any remittance payable upon demand by the DOJ or failure to satisfy any court ordered money judgment, including restitution. (Penal Code § 11102.1 (d).)

Existing law states that DOJ shall charge a fee sufficient to cover its costs under this law. (Penal Code § 11102.1 (j).)

Existing law defines “custodian of records” as the individual designated by an agency responsible for the security, storage, dissemination, and destruction of the criminal records furnished to the agency and who serves as the primary contact for the DOJ for ant related issues. (Penal Code, 11102.2. (a)(1).)

Existing law provides that commencing January 1, 2011 the DOJ shall establish, implement and maintain a confirmation program to process fingerprint-based criminal record background clearances on individuals designated by agencies as custodians of records. Commencing July1, 2011, no person shall serve as an agency custodian of records unless confirmed by the DOJ. Criminal Justice agency personnel who have undergone state and federal criminal record background check are exempt from the confirmation requirements. (Penal Code § 11102.2 (b).)

This bill provides that individuals who roll fingerprint impressions, either manually or electronically, for non-law-enforcement purposes shall submit to the DOJ fingerprint images and related information required by the department, for the purpose of obtaining information about the existence and content of a record of state or federal arrests or convictions and information about the existing and content of a record of state or federal arrests for which the DOJ establishes that the person is free on bail or on their on recognizance pending trial or appeal.

This bill clarifies that that instead of requiring that DOJ refuse to certify an individual with specified convictions this bill gives them discretion on whether or not to refuse to certify the person.

This bill provides that the department shall implement regulations to aid in determining whether an offense is substantially related to the qualifications etc. of a fingerprint roller.

COMMENTS

1. Need for This Bill

According to the author:

AB 3235 would provide the DOJ with discretion to certify applicants with prior criminal convictions who can sufficiently demonstrate rehabilitation, and align the DOJ’s certification process with similar licensing practices. The Department receives roughly 5,000 of these applications per year and roughly, 8-10 percent of those applications are denied. While the number of people is not that large, the impact of those denials can be significant for the affected individuals and the organizations they work for.

AB 3235 will ensure that for any crime to be disqualifying, it must bear on the duties and responsibilities of the position. AB 3235 also requires the DOJ to consider an applicant’s rehabilitation, the passage of time since the offense, and other evidence bearing on whether the applicant is presently capable of fulfilling the responsibilities. This will remove barriers to certification for persons with past convictions, and bring the DOJ’s certification process into line with other licensing processes in California.

2. Qualifications for certification as a fingerprint roller

A person who seeks to become a fingerprint roller for general background check purposes has to submit to a background check by DOJ. Under existing law DOJ is required to deny certification if the person has been convicted of a felony or any other offense that involves moral turpitude, dishonesty, or fraud, and bears on the applicant's ability to perform the duties or responsibilities.

This bill instead gives DOJ the discretion whether or not to certify a person convicted of a felony or conviction that is substantially related to the qualifications, functions, or duties of a fingerprint roller.

This bill also requires DOJ to implement regulation to aid in determining whether an offense is substantially related to the qualifications, functions, or duties of a fingerprint roller. The criteria for substantially related shall include whether the nature and gravity of the offense, the passage of time since the date of the offenses, or whether the applicant has offered credible evidence of rehabilitation.

3. Argument in Support

Californians for Safety and Justice supports this bill stating:

The DOJ is responsible for certifying qualified individuals who apply to become "fingerprint rollers" and "custodians of records." Fingerprint rollers take fingerprint impressions of individuals who are required to have criminal history background checks for non-law enforcement purposes, such as various licensing requirements. And custodians of records are responsible for the security of any criminal records that a public or private entity may receive from the DOJ, for example, in connection with background checks.

The Department receives roughly 5,000 of these applications per year and roughly 8-10 percent of those applications are denied. While the number of people is not that large, the impact of those denials can be significant for the affected individuals and the organizations they work for.

Currently, state law prohibits DOJ from certifying any applicant with a felony conviction. It also limits the DOJ's authority to certify applicants with misdemeanor convictions involving moral turpitude, fraud, or dishonesty. In the past, this has resulted in some applications being denied based on misdemeanor crimes dating back decades, or where the applicant has presented significant evidence of rehabilitation.

AB 3235 will ensure that for any crime to be disqualifying, it must bear on the duties and responsibilities of the position. AB 3235 also requires the DOJ to consider an applicant's rehabilitation, the passage of time since the offense, and other evidence bearing on whether the applicant is presently capable of fulfilling the responsibilities of a fingerprint roller or custodian of records. This will remove barriers to certification for persons with past convictions and bring the DOJ's certification process into line with other licensing schemes in California.