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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 442                      **Hearing Date:** June 27, 2023  
**Author:** Villapudua  
**Version:** March 15, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *State summary criminal history information*

### HISTORY

**Source:** Californians for Safety and Justice

**Prior Legislation:** SB 211 (Umberg) Chapter 723, Stats. 2021  
AB 2133 (Weber) Chapter 965, Stats. 2018  
AB 971 (Garcia), Chapter 458, Statutes of 2013  
AB 428 (Fletcher), Chapter 441, Statutes of 2009  
SB 2161 (Schiff), Chapter 421, Statutes of 2000

**Support:** A New Way of Life Reentry Project; California Attorneys for Criminal Justice; California Public Defenders Association (CPDA); Community Legal Services in East Palo Alto; County of Santa Clara; East Bay Community Law Center; Legal Aid At Work; Legal Services for Prisoners With Children; National Association of Social Workers, California Chapter; Open Door Legal; Peace Officers Research Association of California (PORAC); Root and Rebound Reentry Advocates; Santa Clara County District Attorney's Office

**Opposition:** None known

**Assembly Floor Vote:** 79 - 0

### PURPOSE

***This bill requires the Department of Justice (DOJ) to provide state summary criminal history information (RAP sheets) to public defenders or specified non-profit attorneys if requested in the course of consultation or representation and the client or prospective client gives informed written consent.***

*Existing law* requires DOJ to maintain state summary criminal history information. (Penal Code §11105(a).)

*Existing law* requires DOJ to furnish state summary criminal history information to specified entities, including if 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 other entity in fulfilling employment, certification, or licensing duties, specified restrictions

listed in the Labor Code are followed. (Penal Code § 11105 (b).)

*Existing law* provides that DOJ shall furnish summary criminal history to the following entities if the information is needed in the course of their duties:

- a) Courts of the state;
- b) Peace officers of the state, as defined;
- c) District Attorneys of the state;
- d) Prosecuting city attorneys or city prosecutors of a city within the state;
- e) City attorneys pursuing civil gang injunctions or drug abatement actions, as defined;
- f) Probation officers of the state;
- g) Parole officers of the state;
- h) Public defenders or attorneys of record in a proceeding for a certificate of rehabilitation and pardon;
- i) Public defenders or attorneys of record if they are authorized access by statute or decisional law;
- j) An agency, officer, or official of the state if the information is required to implement a statute or regulation;
- k) A city or county, city and county, or an officer or official thereof if access is needed in order to assist the fulfilling of employment, certification, or licensing duties is access is specifically authorized by the city council or other governing body, or if required to implement a statute or regulation;
- l) The person who's information is reflected in the criminal history information;
- m) A person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation;
- n) Health officers of a city, county, city and county, or district when in the performance of their official duties;
- o) A managing or supervising correctional officer of a county jail or other county correctional facility;
- p) A humane society, or society for the prevention of cruelty to animals for purposes of appointing humane officers;
- q) Local child support agencies, provided certain information is deleted or purged;
- r) County child welfare agency personnel who have delegated authority as probation officers, as specified;
- s) The court of a tribe, as specified;
- t) Child welfare agency of a tribe, as specified;
- u) An officer providing conservatorship investigations;
- v) A court investigator providing investigations or reviews in conservatorships, as specified;
- w) A person authorized to conduct a guardianship investigation, as specified;
- x) A humane officer for the performance of his or her duties;
- y) A public agency that is an entity formed by the regional transportation planning authority as defined, for the purpose of oversight and enforcement policies; and,
- z) A state entity or its designee that receives federal tax information. (Penal Code § 11105(b)(1)-(26).)

*Existing law* allows DOJ to furnish state summary criminal history information to specified entities and, when specifically authorized, federal-level criminal history information upon a showing of a compelling need, provided that when information is furnished to assist an agency,

officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 11105 (c).)

*Existing law* allows DOJ to charge a fee to reimburse department costs, and a surcharge to fund system maintenance and improvements, whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes. Allows, notwithstanding any other law, any person or entity required to pay a fee to DOJ for information received under this provision to charge the applicant a fee sufficient to reimburse the person or entity for this expense. (Penal Code § 11105 (e).)

*Existing law* authorizes, notwithstanding any other law, a human resource agency or an employer to request from DOJ records of all convictions or any arrest pending adjudication involving the offenses specified of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. Requires DOJ to furnish the information to the requesting employer and also send a copy of the information to the applicant. (Penal Code § 11105.3 (a).)

*Existing law* requires a local criminal justice agency to furnish local summary criminal history information to any of a list the specified entities, and authorizing the local criminal justice agency to furnish this information to any of a list of specified entities upon a showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, specified restrictions listed in the Labor Code are followed. (Penal Code § 13300.)

*Existing law* allows a testifying witness's credibility to be attacked by evidence of a prior felony conviction. (Evidence Code § 788.)

*Existing law* allows a testifying witness's credibility to be attacked by evidence of prior acts tending to show a lack of honesty or veracity. (Evidence Code § 786; *People v. Wheeler* (1992) 4 Cal. 4th 284, 296.)

*Existing law* defines which nonprofit entities are presumed to be eligible for legal services funding administered by the State Bar. (Bus. & Prof. Code §§ 6213, 6214, 6214.5, 6215.)

*Existing law* provides tax-exempt status to nonprofit organizations with specified purposes, including charitable. (26 USCS § 501(c)(3).)

*This bill* shall also furnish state summary criminal history information to a public defender, an attorney whose practice is qualified to receive funding under Section 6213 of the Business and Professions Code, or an attorney providing legal services at an organization that is organized pursuant to paragraph (3) of subdivision (c) of Section 501 of the Internal Revenue Code, if the information is requested in the course of a consultation or representation, on behalf of a prospective client or client who is the subject of state summary criminal history information, and the subject of the information gives informed written consent to the information being furnished.

## COMMENTS

### 1. Need for This Bill

According to the author:

With California having one of the highest recidivism rates in the country, it is important that we enact legislation that will help formerly incarcerated individuals. AB 442 will help these individuals reintegrate into society by removing unnecessary delays and barriers in receiving their state summary criminal history information (commonly called a “RAP” sheet). This will allow formerly incarcerated individuals to receive accurate information about any impacts of their conviction(s) on employment, housing, education, or immigration.

### 2. Criminal Record Information

State summary criminal history information is the master record of information compiled by DOJ pertaining to the identification and criminal history of any person. This information includes name, date of birth, physical description, fingerprints, photographs, arrests, dispositions and similar data. (Penal Code § 11105 (a).) State summary criminal history information is commonly referred to as a “RAP” sheet.

Under current law, and as relevant here, DOJ must provide summary criminal history information to the following: a public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon; a public defender or attorney of record when representing a person in a criminal case or a juvenile delinquency proceeding, if the information is requested in the course of representation; and the subject of the state summary criminal history information. (Penal Code, § 11105 (b)(8), (b)(9) & (b)(12).)

This bill would require DOJ to also provide the summary criminal history information to public defenders or specified non-profit attorneys, if requested in the course of consulting or representing a potential client or client, and the person gives their informed written consent.

### 3. Argument in Support

A New Way of Life Reentry Program supports this bill stating:

In supporting clients in need of clean slate legal services, attorneys who provide these services have not traditionally been included in the list of those with access to state summary criminal history information (commonly called a “RAP” Sheet). The RAP Sheet contains information necessary to evaluate a person’s conviction history for potential post-conviction remedies and any restrictions associated with their conviction(s). While the courts, law enforcement, prosecutors, state agencies, local governments, and a number of other entities and people can be access this information nearly instantly. A person who is the subject of this information must complete a multi-step process that requires an in-person application and paying fees costing between \$25 and \$200 to obtain their own conviction records. Further, the person must then wait weeks to receive their information before they seek the

assistance of an attorney to assist with any post-conviction remedies they may be eligible for and to understand any civil restrictions imposed because of their conviction history.

In addition, recent changes to the law have created automated record cleaning relief. This powerful tool can address many of the issues people face because of their convictions. The Department of Justice does not provide people with any notice of relief granted under these new laws. Therefore, a person would not know their rights without first knowing if they have received these automatic remedies. Having timely access to state summary criminal history information allows an attorney to inform the person of all available remedies. Further, identifying automated relief prevents the filing of duplicative and unnecessary petitions, thus saving limited court resources.

By allowing clean slate, legal aid, pro bono, and other attorneys supporting people with a conviction history, to swiftly obtain the state summary criminal history information without additional costs, AB 442 reduces barriers to post-conviction relief and allows for a more efficient evaluation of a person's conviction history which is critical to provide accurate information about any impacts of their conviction(s) on employment, housing, education, or immigration.

**-- END --**