
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: AB 709 **Hearing Date:** June 13, 2023
Author: McKinnor
Version: May 31, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Criminal history information*

HISTORY

Source: Los Angeles District Attorney's Office

Prior Legislation: Not applicable

Support: California District Attorneys Association; California Public Defenders Association

Opposition: None known

Assembly Floor Vote: Not applicable

PURPOSE

The purpose of this bill is to authorize a public prosecutor to provide criminal history information to a public defender's office or governmental agency when that information provides exculpatory evidence or impeachment evidence against a testifying peace officer.

Existing law in, *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court established that the prosecution must turn over all evidence that might exonerate the defendant (exculpatory evidence) to the defense.

Existing law requires the prosecuting attorney to disclose to the defendant or their attorney all of the specified materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies, including among other things, all relevant real evidence seized or obtained as a part of the investigation of the offenses charged; any exculpatory evidence; and relevant written or recorded statements of witnesses whom the prosecutor intends to call at the trial. (Evidence Code § 1054.1)

Existing law provides that a prosecutor who intentionally withholds relevant, exculpatory information is guilty of a felony punishable by imprisonment in a county jail for 16 months, or 2, or 3 years. (Penal Code § 141(c).)

Existing law requires local criminal justice agencies to record and store arrest and identification data as local summary criminal history information. (Penal Code § 13300)

Existing law provides when and to whom a local agency can furnish local criminal history information including: the courts of the state; peace officers; district attorneys; prosecuting attorneys; city attorneys, for specified purposes only; probation officers; parole officers; public defenders for specified purposes only; any agency, officer, or official of the state when necessary to implement a statute, regulation, or ordinance; a local entity in order to assist in the employment certification or licensing; the subject of the criminal history information; any person expressly authorized in order to implement a statute; any managing or supervising correctional officer; local child support agency; and, county welfare agency; humane officer. (Penal Code § 13300(b))

This bill expands when a public defender can have access to local criminal history information to include juvenile delinquency proceedings.

This bill also authorizes a public prosecutor to provide local summary criminal history information and related criminal case information to a public defender's office or governmental agency for the purposes of disclosing exculpatory evidence or impeachment evidence against any testifying peace officer.

This bill provides that any disclosure of evidence or information shall not constitute a disclosure under any other law, nor shall any privilege or confidentiality be deemed waived by that disclosure.

COMMENTS

1. Need for This Bill

According to the author:

It is extremely crucial for Brady information to be provided to the defendant because it could make the difference between an innocent versus guilty verdict. It is imperative that the prosecutor's office provide the defense's counsel with potential Brady information in order to uphold a fair and just trial.

2. The Prosecutor's Duty to Provide Exculpatory Evidence to the Defense

In *Brady v. Maryland* (1963) 373 U.S. 83, 87, the United States Supreme Court held that federal constitutional due process creates an obligation on the part of the prosecution to disclose all evidence within its possession that is favorable to the defendant and material on the issue of guilt or punishment. Brady evidence includes evidence that impeaches prosecution witnesses, even if it is not inherently exculpatory. (*Giglio v. United States* (1972) 405 U.S. 150, 153- 155.) Further, the prosecution's disclosure obligation under *Brady* extends to evidence collected or known by other members of the prosecution team, including law enforcement, in connection with the investigation of the case. (*In re Steele* (2004) 32 Cal.4th 682, 696-697, citing *Kyles v. Whitley* (1995) 514 U.S. 419, 437.) In order to comply with Brady, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." (*Kyles*, supra, 514 U.S. at p. 437; accord, *In re Brown* (1998) 17 Cal.4th 873, 879.) Evidence is material under *Brady* if there is a reasonable probability that the result of the proceeding would have been different had the information been disclosed. (*United States v. Bagley* (1985) 473 U.S. 667, 682.) The prosecution's duty to disclose exists whether or

not the defendant specifically requests the information. (*United States v. Agurs* (1976) 427 U.S. 97, 107.) Failure to disclose evidence favorable to the accused violates due process irrespective of the good or bad faith of the prosecution. (*Brady*, supra, 373 U.S. at p. 87.) California's Criminal Discovery Statute, as codified in Penal Code Section 1054 et seq. contains additional discovery requirements. Section 1054.1 requires the prosecuting attorney to disclose to the defendant materials and information known to the prosecution, including among other things, all relevant real evidence seized or obtained as a part of the investigation of the offenses charged; any exculpatory evidence; and relevant written or recorded statements of witnesses whom the prosecutor intends to call at the trial. (Evidence Code, § 1054.1.) Additionally, Rule 3.8 (Special Responsibilities of a Prosecutor) of the California Rules of Professional Conduct requires that prosecutors timely disclose all evidence or information that tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when relieved of this responsibility by a protective order of the court. Moreover, if the favorable material evidence is contained in the files of an agency connected to the investigation of the case, the prosecutor is in constructive possession of it, and has a duty to disclose it. (See *People v. Lucas* (2014) 60 Cal.4th 153, 274

3. Disclosure of summary criminal history information

Existing law limits who can have access to local criminal history information. This bill makes it clear that a prosecutor can share with a public defender's office or governmental agency summary criminal history information and associated criminal case information to any public defender's office or governmental agency for the purposes of disclosing exculpatory evidence or impeachment evidence against any testifying peace officer.

4. Argument in Support

In support of this bill the sponsor states:

The California District Attorneys Association (CDAA) is pleased to support your measure, AB 709 (McKinnor), which would allow prosecutors in possession of a transcript that contains potentially exculpatory or impeaching material involving a peace officer-witness to provide an unofficial copy of the transcript or relevant portion thereof to the defense during informal discovery. This bill facilitates the discovery process by helping to avoid disputes over the costs of providing such transcripts.

-- END --