

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Cottie Petrie-Norris, Chair

AB 956 (Alvarez) – As Introduced February 14, 2023

SUBJECT: California State Auditor: background checks

SUMMARY: Requires the California State Auditor (CSA) to collect fingerprints from prospective employees and contractors, as specified, and complete a background check with the Department of Justice (DOJ). Specifically, **this bill**:

- 1) Requires the CSA to require fingerprint images and associated information from a prospective employee whose duties include or would include access to:
 - a) Records, documents, or information restricted from disclosure to the public, as specified.
 - b) Confidential information gathered during the course of a California Whistleblower Protection Act investigation.
- 2) Requires the CSA to include in any services contract that is entered into, renewed, or amended on or after January 1, 2024, a provision requiring the contractor and their employees, agents, contractors, or subcontractors to permit the collection of their fingerprints and associated information for the purposes of requesting a background check from the DOJ.
- 3) States this requirement would apply to prospective contractors, as specified, who will have access to: restricted or confidential records, documents, information, including information gathered during the course of a California Whistleblower Protection Act investigation, or access to cash, checks, and other accountable items.
- 4) Provides that the fingerprint images and associated information obtained pursuant to this bill shall be furnished to the DOJ to ascertain the existence of a conviction and arrest record, and for which the DOJ establishes the individual was released on bail or on their own recognizance pending trial.
- 5) States that requests for federal criminal offender records received by the DOJ under this bill's provisions shall be forwarded to the Federal Bureau of Investigation (FBI).
- 6) Requires the DOJ to respond to the CSA with the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, as specified.
- 7) Requires the CSA to request subsequent state or federal arrest or disposition notifications from the DOJ, as specified.
- 8) Permits the DOJ to assess a fee sufficient to cover processing costs, as specified.

- 9) Authorizes the CSA to investigate the criminal history of the following individuals to make a final determination as to their fitness to perform duties related to accessing restricted records, documents, information, or items:
 - a) Individuals applying for employment;
 - b) Prospective contractors and their employees, contractors, subcontractors, or agents.

EXISTING LAW:

- 1) Federal law authorizes the FBI to collect national criminal history information for centralization in the Criminal Justice Information System (CJIS), and to disseminate this information to state agencies for employment purposes (Public Law Sections 92-544).
- 2) Makes, among other things, conviction of a felony or misdemeanor involving moral turpitude, cause for discipline of an employee. (Government Code Section 19572(k))
- 3) States a plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a felony charge or offense involving moral turpitude shall also be considered a conviction. (Government Code Section 19572(k))

FISCAL EFFECT: Unknown, this bill has not been analyzed by a fiscal committee.

COMMENTS:

The FBI collects and securely stores criminal history data, including fingerprints, from nearly 18,000 law enforcement agencies across the nation in the CJIS. When a federal criminal background check is requested by an authorized user, fingerprint images are forwarded to the FBI and a fingerprint-based search of records in the national criminal history database is performed. If the applicant's fingerprints match data in the national criminal history database, the FBI sends the DOJ criminal history information from any state or federal agencies that have reported the information to the FBI.

In December 2022, the FBI notified the California Department of Justice that the current state statutory authority for the FBI process fingerprint-based background checks for state employees no longer qualified for CJIS access. Instead, applicant agencies wishing to restore access to the CJIS for the purpose of servicing state employee fingerprint-based background checks must enact new statutory authority that:

- 1) Explicitly references a national criminal history check;
- 2) Includes an express or implied reference such as "submit to the FBI";
- 3) Authorizes the use of FBI records for screening of applicants; and
- 4) Identifies the specific categories of licensees and employees that fall within its purview to avoid being overly broad.

This bill will allow the State Auditor continued access to CJIS for the purpose of conducting background checks on its prospective employees and contractors.

According to the Author:

“Last year, the FBI announced that it would no longer allow access to Criminal Justice Information Services (CJIS) system—the database CA state agencies use to gather information used in a background check—based on existing California statutes. They instruct a legislative fix that codifies the requirement that the State Auditor conducts background checks of employees and grants it authority to engage with the Department of Justice to gather the necessary information for a complete background check. AB 956 ensures the State Auditor’s Office will continue receiving data from the FBI Criminal Justice Information Services (CJIS) system, and state workers and contracted employees handling sensitive information through the State Auditor’s office are adequately vetted.”

REGISTERED SUPPORT / OPPOSITION:**Support**

None received.

Opposition

None received.

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