

# **Suppression of Incomplete Criminal History Information**

Title 11, Division 1, Chapter 7, Article 2

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**Section 720 – Title and Scope**

This Article shall be known as “Suppression of Incomplete Criminal History Information.”  
The Department of Justice is statutorily mandated to maintain state summary criminal history information reported to it, and to furnish such information to any authorized person, agency, officer, official of state or local government, public utility, or entity to assist in fulfilling employment, licensing, or certification duties. These regulations make specific the steps the Department will take to obtain disposition information corresponding to each arrest reported, and make clear what criminal history information, if any, will be furnished to an authorized entity for employment, licensing or certification purposes, when complete criminal history information is not available.

NOTE: Authority cited: Section 11077, Penal Code. References: Section 11105, Penal Code.

**Section 721 – Definition of Key Terms**

The following definitions shall be applicable when used in these regulations:

- a) “Attorney General” means the Attorney General of the State of California or any employee of the Attorney General acting under the authority of the Attorney General. The term Attorney General may be used interchangeably with the term Department of Justice.
- b) “Authorized entity” means any entity or individual authorized by a court, statute or decisional law to receive state summary criminal history information to assist in fulfilling their employment, licensing, or certification duties.
- c) “Criminal justice agencies” means those agencies involved in the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or those agencies responsible for the reporting of criminal offender record information to the Department of Justice.
- d) “Department of Justice” means the California Department of Justice or any employee of the Department of Justice acting under the authority of the Department of Justice, and may be referred to as “the Department” or as “DOJ”.
- e) “Disposition” means the outcome of the arrest charge(s), including but not limited to, conviction, dismissal, acquittal, imposition of sentence by a court, decision by the prosecuting agency not to file or pursue the charge(s), or verification that the arrest charge(s) are pending.
- f) “FBI” means the Federal Bureau of Investigation.
- g) “State summary criminal history” means the California master record of information

compiled and maintained by the Department of Justice pertaining to the identification and criminal history of any person, such as name(s), date of birth, physical description, fingerprints, photographs, date of arrest(s), arresting agency or agencies, booking number(s), charge(s), disposition(s), and similar data.

NOTE: Authority cited: Section 11077, Penal Code. References: Sections 11105, 13101 and 13125, Penal Code.

### **Section 722 – Process to Obtain Complete Criminal History Information**

- a) If an individual, as a condition of obtaining employment, or a license, permit or certificate, is required to submit to a state-level criminal history record check, a search of DOJ's criminal history records shall be conducted to determine whether the individual has any record of criminal conduct in California.
- b) When the state criminal history record does not include disposition information corresponding to each and every arrest, DOJ shall make the following efforts to obtain the missing disposition information:
  - 1) The Department shall query the arresting agency, the prosecuting agency, and the court or local probation agency as applicable; and
  - 2) If the Department is unable to obtain the missing disposition information from any of these agencies, the Department shall query any other criminal justice agencies that might possess the missing disposition information for the arrest in question.
- c) If an individual, as a condition of obtaining employment, or a license, permit or certificate, is also required to submit to a national-level criminal history record check, DOJ will initiate a search of the FBI's criminal history records to determine whether the individual has any record of criminal conduct in any other jurisdiction.
- d) When the national criminal history record does not include disposition information for each and every arrest, the Department shall make the following efforts to obtain the missing disposition information:
  - 1) The Department shall search the available automated systems of the out-of-state or federal agency that originated the arrest entry; and
  - 2) If the Department is unable to obtain the missing disposition information through these efforts, the Department shall query the appropriate state, local or federal agency, as identified by the FBI.

NOTE: Authority cited: Section 11077, Penal Code. References: Sections 11105 and 13101, Penal Code.

### **Section 723 – Suppression of Incomplete Criminal History Information**

- a) When the Department has exhausted all efforts described in 722, the disposition information shall be deemed to be unavailable. The Department shall not be required to repeat the Section 722(b) and (d) searches for an unavailable disposition in response to any future request from an authorized entity.
  
- b) Unless information release is otherwise authorized by law, whenever DOJ furnishes either national or state summary criminal history information to an authorized entity for employment, licensing or certification purposes, the Department shall not disclose any information related to any arrest for which it is unable to obtain a corresponding disposition. The Department shall furnish all other criminal history information, if any, which it is authorized to disclose pursuant to the statute(s) governing the specific applicant type.
  
- c) Unless otherwise authorized by law, where only an arrest record exists but the Department is unable to obtain corresponding disposition information, the Department shall suppress that arrest information and provide the authorized agency with a response that no criminal history information exists.

NOTE: Authority cited: Section 11077, Penal Code. References: Section 432.7, Labor Code, Sections 11105 and 13203, Penal Code, *Central Valley Chapter of the 7th Step Foundation, Inc. v. Younger* (1979) 95 Cal.App.3d 212 and *Central Valley Chapter of the 7th Step Foundation, Inc. v. Younger* (1989) 214 Cal.App.3d 145.

### **Section 724 – Audit Trail**

The Department shall maintain an audit trail of its efforts to obtain missing arrest disposition information. For each arrest on a subject’s record for which the Department is unable to obtain a corresponding disposition, the audit trail information shall include the identity of the person conducting the query, the date of each query, each agency and/or database queried, and the result of each query.

NOTE: Authority cited: Section 11077, Penal Code. References: Section 11105, Penal Code.