

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 949 (Gipson) – As Introduced February 16, 2017

SUBJECT: School employees: contracts: sole proprietors: criminal background checks

SUMMARY: Requires sole proprietors that have specified types of contracts with school districts to be subject to criminal background checks. Specifically, **this bill:**

- 1) States that an individual operating as a sole proprietor of an entity that has a specified type of contract with a school district is considered an employee of that entity.
- 2) Requires a school district to prepare and submit the sole proprietor's fingerprints to the Department of Justice (DOJ) and for the DOJ to ascertain if the individual has been arrested or convicted of any crime.

EXISTING LAW:

- 1) Existing law requires that if the employees of any entity that has a contract with a school district may have contact with pupils, those employees' fingerprints must be submitted to DOJ for purposes of conducting a criminal background check. This provision applies to entities providing the following or other services, unless, on a case by case basis, the school district determines the employees of the entity will have limited contact with pupils:
 - school and classroom janitorial
 - schoolsite administrative
 - schoolsite grounds and landscape maintenance
 - pupil transportation
 - schoolsite food-related.
- 2) Current law requires any public or private agency that receives criminal history information from the DOJ to designate at least one custodian of records. That individual must be confirmed by DOJ following a state and federal level criminal record background check. The confirmation is revoked if the individual is convicted of a felony offense, or any other offense that involves moral turpitude, dishonesty, or fraud, or that impacts the applicant's ability to perform the duties or responsibilities of a custodian of record (Penal Code 11102.2).
- 3) Any person who, knowing he or she is not authorized by law to receive criminal history information, knowingly receives or possesses the record or information is guilty of a misdemeanor (Penal Code 11143).
- 4) Existing law prohibits public and private schools from employing individuals in non-certificated positions without first conducting a criminal background check of the individual. Existing law also requires that employees of entities that provide certain contracted services to school districts, who may come into contact with pupils, to be fingerprinted and prohibits employees of those entities from coming into contact with pupils if they have been convicted of a serious or violent felony (EC 45125 and 45125.1).

- 5) Under existing law, sex offender registrants whose sex crime was against a victim under age 16 are prohibited by law from working, as an employee or volunteer, with minors, if the registrant would be working with minors directly and in an unaccompanied setting on more than an incidental or occasional basis or would have supervisory or disciplinary power over the child. If the registrant's crime was not against a victim under age 16, the registrant must notify the employer or volunteer organization of his status as a registrant. Failure to comply with this law is a misdemeanor offense (Penal Code 290.95).
- 6) Current law specifies when a school district or county office of education (COE) requests from the Department of Justice (DOJ), records involving criminal offenses committed by a prospective volunteer, the school district or COE may request that the DOJ provide subsequent arrest notification service and specifies that the DOJ shall comply with that request (EC 35021.2).
- 7) Existing law prohibits the governing board of a school district from employing or retaining in employment the following persons:
 - persons who have been convicted of a violent or serious felony unless the person has obtained a certificate of rehabilitation and pardon. (EC 45122.1)
 - persons who have been convicted of specified sex offenses unless the conviction was reversed, the person was acquitted, or the conviction was dismissed pursuant to Section 1203.4 of the Penal Code. (EC 44836)
 - persons who have been convicted of specified drug offenses unless the conviction is reversed, the person is acquitted, or the charges are dismissed. (EC 44836)

FISCAL EFFECT: The Office of Legislative Counsel has keyed this bill as a state-mandated local program.

COMMENTS:

Need for the bill: The bill authorizes school districts to conduct background checks on sole proprietorship vendors providing specified services to school districts, in order to protect the safety of pupils and staff on school campuses. According to the author,

“As of 2011, state law required all agencies that receive criminal history information from the California Department of Justice (DOJ) to designate at least one “Custodian of Records” duly processed and approved by the DOJ, to be responsible for the security, storage, dissemination, and destruction of criminal record information. Accordingly, each school must have a DOJ-confirmed Custodian of Records who is authorized to receive the criminal history information for all prospective employees.

Sole proprietors are essentially self-employed and therefore do not meet the definition of an employee of the school nor an employee of any vendor entity that can use its DOJ-confirmed Custodian of Records to conduct the clearance. This is a critical measure designed to ensure

school safety and security by extending the criminal background check requirement to sole proprietors.”

DOJ staff notes that they provided technical support to the author and have confirmed that this proposed solution would adequately address this deficiency.

DOJ background checks. DOJ is required to maintain criminal history information, which includes the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person. DOJ provides an automated service for criminal history background checks that may be required as a condition of employment, licensing, certification, foreign adoptions, or visa or immigration clearances. This information may only be provided to a person who has been confirmed as the agency’s custodian of record.

Arguments in support. Supporters note that current law provides clear guidance and instruction for school districts on how background checks are to be conducted. However, the law is silent when an individual is neither a potential school district employee nor an employee of an entity that is authorized to conduct background checks. The laws do not contemplate a school district contracting services with a sole proprietor, who clearly cannot conduct a background clearance on themselves. While school districts have in the past ensured the safety of their students, teachers, and parents by conducting background checks on sole proprietors, they do so knowing that to be in possession of these reports is a misdemeanor pursuant to Penal Code 1143. This bill seeks to clarify the law and ensure school districts have the authority to conduct background checks on all individuals who may come into contact with students, including sole proprietors.

Supporters state that all school employees must undergo rigorous background checks to ensure that students and staff are protected and that individuals convicted of serious offences are not allowed on campus. Students, parents and employees are entitled to know that anyone working on a public school campus has been properly vetted.

Prior legislation. AB 13 (Lowenthal) of the 2011-12 Session would have authorized a school district, county office of education, or charter school to request a local law enforcement agency to conduct a criminal records check of a prospective nonteaching volunteer; prohibited persons who have been convicted of certain violent or serious felonies, specified sex offenses, or felony controlled substances offenses from serving as a nonteaching volunteer, as specified; and required charter schools to comply with existing fingerprint laws. The bill was held in Senate Education.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles Unified School District (Sponsor)
American Federation of State, County and Municipal Employees
California School Employees Association

Opposition

None on file

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087