
Legislative Update: Changes in DOJ Background Checks and Expansion of the Statewide Immunization Database

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Two important bills, Senate Bill (SB) 731 and Assembly Bill (AB) 1797, were enacted in September, impacting the information available to school districts conducting background checks, and expanding the use of a Statewide immunization database.

SB 731

The Education Code prohibits local educational agencies (LEAs) from hiring staff who have been convicted of controlled substance abuse offenses, serious felonies, violent felonies, or sexual abuse offenses, unless the applicant can prove to the LEA that they have been rehabilitated. Previously, the California Commission on Teacher Credentialing (CTC) could not grant a credential to an applicant who had been convicted of a controlled substance offense. SB 731 changes the law so that controlled substance offenses do not automatically disqualify an applicant from obtaining a credential or employment with an LEA. Under the updated provisions, if the CTC determines that the applicant has been rehabilitated for at least five years, has received a certificate of rehabilitation and pardon, or that the person has been released from all penalties pursuant to Penal Code section 1203.4, the CTC may issue a credential.

The new law also amends a recent law which had prevented almost all employers, including LEAs, from accessing records of various criminal offenses, including serious and violent felonies. Such crimes over four years old automatically no longer appear in federal Department of Justice (DOJ) background checks, and are inaccessible to most potential employers, landlords, and other entities. Under the provisions of SB 731, LEAs will once again have access to such records, and may use such information in making employment decisions.

Existing law requires the DOJ to maintain state summary criminal history information and to furnish this information to various state and local government officers, officials, and other prescribed entities, if needed in the course of their duties. Existing law also requires the DOJ to provide the CTC with every conviction rendered against an applicant, retroactive to January 1, 2020, regardless of relief granted. The updated provisions now require the DOJ to provide that information to school districts, county offices of education, charter schools, private schools, state special schools for the blind and deaf, or entities required to perform background checks because of a contract with any of those entities.

AB 1797

AB 1797 expands the use of the statewide immunization database. Previously, the law was permissive in authorizing various agencies, including health care providers, schools, childcare facilities, and county human services agencies, to disclose specified immunization information to local health departments and the State Department of Public Health as well as to each other. The law has been amended to *require* such agencies to disclose such information and adds the patient's race and ethnicity to the list of information that must be disclosed. Additionally, until January 1, 2026, AB 1797 authorizes schools, childcare facilities, family childcare homes, and county human services agencies to use the specified COVID-19 immunization information, to perform immunization status assessments of pupils, adults, and clients to ensure health and safety. The law is perhaps intentionally vague, and it is unclear what the Legislature meant by "to ensure health and safety." In the case of schools, the option to perform immunization status assessments only applies if the school's governing board has adopted a policy mandating COVID-19 immunization for school attendance, and the school limits the use of the data to verifying immunization status for this purpose. At this time, without further changes to State law, it is unclear whether individual school districts will be able to implement their own COVID-19 student vaccine mandate.

The law requires medical providers and any of the specified agencies to provide notice to patients of their intent to share the specified information and provides an opportunity for a patient or the patient's parent or guardian to refuse to permit record sharing.

LEAs should note that AB 1797 places affirmative duties on them to participate in the State vaccination database and provide certain notices to the parents of students whose vaccination information they are now required to share. The best way to provide such notice will likely be through the annual parental notices provided at the beginning of the school year.

If you have any question about SB 731 or AB 1797, would like assistance in implementing the new affirmative duties under AB 1797, or have questions regarding employee hiring or immunization records retention in general, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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