4-01/080.00 - Disclosure of Arrest Records

Pursuant to labor code section 432.7, no employer may ask an applicant for employment to disclose information concerning an arrest or detention which did not result in a conviction, nor may an employer seek from any source or utilize any record of arrest or detention which did not result in conviction, as a factor in determining any condition of employment, including hiring, promotion, termination, or any apprenticeship training program ,or any other training program leading to employment.

This section also provides that no peace officer or employee of a law enforcement agency with access to criminal offender record information (11075 PC) shall knowingly disclose, with intent to affect a person's employment, any information pertaining to an arrest or detention or proceeding which did not result in a conviction to any person not authorized by law to receive such information. Persons and agencies authorized to receive criminal offender record information are enumerated in section 11105 of the penal code.

Disclosure Exceptions

Section 432.7 contains some specific exceptions to these prohibitions:

- An "applicant" seeking employment as a peace officer, or for a position in a law enforcement agency with access to criminal offender record information or in the Division of Law Enforcement of the Department of Justice, is not protected by this section;
- Any employer at a health facility, as defined in section 1250 of the health and safety code (e.g., Sheriff's medical section), may ask an applicant for a position with regular access to patients to disclose arrests under any section specified in section 290 of the penal code; applicants seeking employment at a health facility for a position with access to drugs and medication may be asked to disclose arrests under any section specified in section 11590 of the health and safety code. As used in section 432.7, it is the "position" with access, not the agency or facility, which activates these exception; and
- Section 11591 of the health and safety code mandates that every Sheriff and all Chiefs of Police shall immediately notify the superintendent of schools upon the arrest of any public or private school employee for any of the offenses enumerated in section 11590 only or section 11364, insofar as that section relates to paragraph (12) of subdivision (d) of section 11054 (regarding LSD), of the health and safety code. Although not specifically addressed in section 432.7 of the labor code, teachers and school employees are not totally exempt from certain disclosures as follows:
    - Section 291 of the penal code mandates that Sheriffs and Chiefs of Police shall immediately notify the superintendent of public schools upon the arrest of any public school employee for any of the offenses enumerated in section 290 or in subdivision 1 of section 261 of the penal code; and
    - Section 291.1 of the penal code mandates the notification of private school authorities of the arrest of any person employed as a teacher in any private school upon the arrest of such person for any of the offenses enumerated in section 290 of the penal code.

Although section 432.7 of the labor code does not authorize the disclosure of the arrest of public school employees and teachers in private schools, it should be noted that section 432.7 is one of general application. Sections 291 and 291.1 of the penal code are specific and require certain disclosures. Section 432.7 of the labor code was enacted after the two penal code sections referenced and did not repeal or amend the disclosure requirements for school employees.

Refer to section 4-01/090.30 when a school employee is arrested.

Department Policy

The prohibitions of section 432.7 of the labor code do not affect the Department's existing policy regarding:

- Advising persons who request information about individuals in custody of the charge, bail, and status of the prisoner. When responding to these requests, the employer of the prisoner shall not be disclosed to the person making the request for information;
- Disclosure of information, upon specific request, to any person or agency authorized by statute, decision, or court order to receive such information (11105 PC). Examples of those "authorized" are: law enforcement agencies, district attorneys, probation and parole officers, defense attorneys, and state agencies. Specific questions regarding access to information can usually be resolved by reference to 11105 PC;
- Notifying a law enforcement agency of the arrest of one of their employees, if the charge is pending/unresolved and is solely for the purpose of enabling that agency to conduct its own independent investigation;
- Press notification of newsworthy incidents (including arrests). Disclosure of the arrestee's employer shall not routinely be made. That disclosure shall only be made when it is the nature of the employment which makes the incident newsworthy. Even in those limited circumstances, identifying the arrestee's job title or description is preferable to disclosing the actual name of the employer; and
- The initiation of an internal or criminal investigation and the attendant procedures, involving a member of this Department arrested for any offense which would otherwise have resulted in the initiation of these proceedings.

Responsibility of Department Members When Arrested

Whenever a member of this Department is arrested for any offense other than a citation for an infraction under the California Vehicle Code (CVC), he shall immediately notify his immediate supervisor of the facts of such arrest.