



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

October 21, 2021

Action Requested

Please Review

To

Information Technology Advisory
Committee, Rules and Policy Subcommittee
Hon. Julie R. Culver, Chair

Deadline

October 25, 2021

From

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Legal Services, Judicial Council

Contact

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Subject

Proposed amendments to access rules related
to bulk distribution of court records

This memorandum supplements the memorandum dated October 18, 2021, titled “Potential Topics for 2022 Rule and Legislation Cycle.” As noted in that memorandum, the Information Technology Advisory Committee (ITAC) received multiple requests to amend rule 2.503(g) of the California Rules of Court¹ to authorize the bulk distribution of criminal court records to public agencies and bona fide research institutions. The requesters contended the change is needed to conform rule 2.503(g) to Penal Code section 13202, which authorizes release of “criminal offender record information” to public agencies and bona fide research institutions “concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders.”

However, as discussed in more detail below, Penal Code section 13202 does not appear to apply to the courts. Rather, it appears to apply to the California Department of Justice. Accordingly,

¹ All further rule references are to the California Rules of Court.

staff recommend against changing the rules to allow bulk distribution of criminal electronic court records.

Rule 2.503(g) limits bulk distribution of electronic court records

Rule 2.503(g) of the California Rules of Court only authorizes bulk distribution of a court’s electronic “calendar, register of actions, and index,” effectively prohibiting bulk distribution of any other electronic court records. Access to electronic court records, other than the calendar, register of actions, or index, is limited to access on a case-by-case basis.² As the advisory committee comment to rule 2.503 explains:

These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.

Penal Code section 13202 authorizes the release of criminal offender record information to certain public agencies and bona fide research institutions

Penal Code section 13202 authorizes the release of criminal offender record information (CORI) to “public agencies” and “bona fide research institutions” “concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders.” The meaning of “public agency” and “bona fide research institution” is not defined. Until 2021, release of CORI to such organizations was discretionary, but the Legislature recently amended Penal Code section 13202 to require CORI to be provided to one specific research institution, the California Firearm Violence Research Center at University of California, Davis.

CORI is defined as, “records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.”³ Under an amendment to Penal Code section 13202 in 2020, CORI expressly includes “criminal court records.”⁴ Certain types of CORI can be released only to authorized persons, and release to unauthorized persons is a crime.⁵ One of the purposes of the

² Cal. Rules of Court, rule 2.503(f).

³ Pen. Code, § 13102.

⁴ Pen. Code, § 13202.

⁵ Pen. Code, § 13302–13303 (addressing authorized release of local summary criminal history information).

protective statutory scheme governing CORI was to ensure “dissemination of criminal offender record information in this state ... be made more uniform and efficient, and better controlled and coordinated.”⁶

Penal Code section 13202 is not entirely clear as to which organizations are permitted or required to provide CORI to public agencies or bona fide research institutions, but it appears most likely that it is limited to the Department of Justice

The Legislature wrote Penal Code section 13202 in the passive voice, making it initially ambiguous as to what organizations can provide the CORI to public agencies and research bodies.⁷ Though written in the passive voice with respect to which organizations may or shall provide CORI, a new amendment that went into effect in September 2021 includes references “the department,” which is most likely the California Department of Justice. Penal Code section 13202 states:

Reasonable costs to *the department* associated with *the department's* processing of that data may be billed to the researcher. If a request for data or letter of support for research using the data is denied, *the department* shall provide a written statement of the specific reasons for the denial.

(Emphasis added.) Though Penal Code section 13202 itself does not state “Department of Justice,” other references to “the department” used in the statutory scheme concerning access to CORI refer to the Department of Justice.⁸

It would be incongruous and potentially absurd for Penal Code section 13202 to apply only to the Department of Justice for purposes of recouping costs and issuing denial letters, and yet also apply to other government organizations for purposes of providing CORI.⁹ Such an interpretation would be inconsistent with the legislative goal of ensuring dissemination of CORI is “uniform and efficient, and better controlled and coordinated.”¹⁰ Furthermore, had the Legislature intended to use more expansive terminology, it could have, as it does elsewhere in

⁶ Pen. Code, § 13100(e).

⁷ Pen. Code, § 13202 (public agencies and bona fide research institutions “may be provided with” CORI and the California Firearm Violence Research Center at UC Davis “shall be provided with” CORI).

⁸ See, e.g., Pen. Code, §§ 13000–13011 (referring to the Department of Justice as “the department” when describing certain duties).

⁹ *Pebworth v. Workers' Comp. Appeals Bd.* (2004) 116 Cal.App.4th 913, 916 (statutes should be construed to be reasonable and avoid absurd results); see also Civ. Code, § 3542 (statutory construction “must be reasonable”).

¹⁰ Pen. Code, § 13100(e).

the statutory scheme. The section immediately after Penal Code section 13202 uses the broader term “criminal justice agency” when describing the timing for release of certain types of information.¹¹ As such, Penal Code section 13202 likely should not be interpreted to apply to criminal justice agencies beyond the Department of Justice because doing so would insert terminology where the Legislature has excluded it.¹²

In addition, the legislative history of the most recent amendments to Penal Code section 13202 that require CORI to be provided to the California Firearm Violence Research Center at UC Davis refers to the Department of Justice only.¹³ Finally, if Penal Code section 13202 applied more broadly than to the Department of Justice to include other criminal justice agencies, the mandate to provide CORI to the UC Davis firearm research center would have imposed costs on local criminal justice agencies, which the Legislature would have had to reimburse.¹⁴ However, the Legislature determined the only costs that could be incurred by local agencies as a result of the enacted bill were provisions related to the creation of a new crime, which were not reimbursable.¹⁵ The provision of the bill creating a new crime was separate from the provision amending Penal Code section 13202.

Based on the foregoing, it appears Penal Code section 13202 applies to the Department of Justice and not to other criminal justice agencies such as the courts. Though Penal Code section 13202 refers to “criminal court records,” that reference alone, in light of the analysis above, is insufficient to indicate that the code section applies to courts. First, the legislative history of the bill that initially added the term “criminal court records” is silent on reasons for adding that term to Penal Code section 13202. Second, the Department of Justice can have criminal court records in its possession. For example, it may obtain copies of criminal court records to correct errors in its own records or may have criminal court records to review in its representation of the state in criminal appeals. Indeed, California Rules of Court on remote access to electronic court records

¹¹ Pen. Code, § 13203; see also Pen. Code, § 13101 (defining “criminal justice agency” as “those agencies at all levels of government which perform as their principal functions, activities which either ... [r]elate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or ... [r]elate to the collection, storage, dissemination or usage of criminal offender record information”).

¹² See *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 725 (“[W]hen the Legislature has carefully employed a term in one place and has excluded it in another, it should not be implied where excluded”) (quoting *Ford Motor Co. v. County of Tulare* (1983) 145 Cal.App.3d 688, 691).

¹³ Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 173 (2021–2022 Reg. Sess.), par. 3.

¹⁴ Cal. Const., art XIII B, § 6 (requiring state reimbursement to local government for state mandates with certain exceptions).

¹⁵ Stats. 2021, ch. 12, § 15 (“No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency ... will be incurred because this act creates a new crime ...”); see also Stats. 2021, ch. 12, § 1 (criminalizing carrying a loaded firearm in a state building).

contemplate the Department of Justice may need regular access to electronic criminal court records and, accordingly, the rules allow for it.¹⁶

Recommendation: Staff recommend against amending rule 2.503(g) to authorize distribute bulk electronic criminal court records.

Attachments and Links

1. Link A: California Rules of Court, rule 2.503,
https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_503.
2. Link B: Penal Code section 13202,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13202&lawCode=PEN.
3. AB 173, Legislative analyses,
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB173.

¹⁶ Cal. Rules of Court, rule 2.540(b)(1)(A) [authorizing courts to allow persons who work for the Attorney General to remotely access certain electronic court records, including criminal].