

ATTACHMENT 11



JUDICIAL COUNCIL
OF CALIFORNIA



Internal Background Check Policy

Security Operations’ Contractor Clearance Program

Title: Background Checks for Contractors Working on the Judicial Council’s Behalf in Restricted Areas

Contact: Security Operations (SO) unit

Policy Statement: Judicial Council staff must adhere to this policy and related procedures to comply with the Federal Bureau of Investigation (FBI) security policy for personnel who have access to criminal justice information and the California Department of Justice (CA DOJ) regulations for the California Law Enforcement Telecommunications System (CLETS). In addition, access to other restricted areas as defined in this policy require adherence to this policy.

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WHO MUST COMPLY WITH THIS POLICY?

This policy applies to:

- Judicial Council (council) divisions, offices, and/or units that contract for non-council employees to work on the council's behalf;
- Council staff who work with those individuals (for example, the project managers); and
- Council staff who work on any contracts or agreements that provide for non-council employees to perform work on the council's behalf.

WHAT IS THE POLICY?

Council staff must do all of the following:

1. Ensure that each "Contractor" is fingerprinted, evaluated, and badged *before* he or she is allowed unescorted access to a "Restricted Area." A person who has not met these requirements may only enter a Restricted Area during an "Emergency Situation" and:
 - a. must be escorted at ALL times by someone who has met these requirements; or
 - b. must be found suitable for unescorted access to Restricted Areas by the court, in compliance with FBI *Criminal Justice Information Services Security Policy* and CA DOJ regulations for CLETS found in *CLETS Policies, Practices and Procedures*.
2. Adhere to the SO procedure for background check services, which is referenced at the end of this policy under Additional Resources.
3. Ensure that contracts, agreements, and related documents do not contradict or counteract this policy or the related SO procedure.

Definition of Contractor

For the purposes of this policy and related SO services, any person who either contracts with the council or is employed through a third party who contracts with the council *who provides services* under that contract at a court or the California Court Technology Center (CCTC).

This excludes contractors and agencies who do not receive payment for services from the council. It also excludes employees of entities that are able to do fingerprint-based background checks that are submitted to the CA DOJ. Those entities are responsible for performing their own background checks of their employees. SO only provides background checks to employees of private contractors who cannot do fingerprint-based background checks that are submitted to the CA DOJ (as commercially-available searches will not suffice).

Definition of Restricted Area

For the purposes of this policy, any area of either the CCTC or a court facility which:

1. contains a means to connect to FBI and CA DOJ criminal databases via CLETS; *or*
2. contains any records or information (transported, processed, or stored in physical or electronic format) that were obtained via CLETS.

3. Are areas within the Facility that are not generally accessible to the public, including judges' chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, and (ii) public areas of a Facility during non-business hours that are subject to security screening during normal business hours.

The definition of Restricted Area also applies to electronic access to network and computing components where CLETS data is transported or stored in a physical or electronic format.

Definition of Emergency Situation

For the purposes of this policy, any condition arising from a sudden or unexpected occurrence in which prompt services are needed *to avoid or minimize* the impact on the CCTC, court facility, or the council staff's ability to do the following:

- Ensure the safety and security of people occupying and visiting the facility;
- Conduct business in a timely manner in a safe and functional environment;
- Preserve the facility; and
- Protect files, records, and documents located in the facility.

Visitors to the CCTC or the non-public areas of a court facility are not required to undergo a background and fingerprint check. They must, however, be escorted at ALL times.

WHAT IS THE PURPOSE OF THIS POLICY?

The council retains contractors to do work on its behalf or on behalf of courts, and these contractors are often located in the courts. Many if not all courts subscribe to CLETS service from the CA DOJ and have CLETS terminals, records, and information in their facilities, as does the CCTC.¹

There are strict regulations regarding access to CLETS. Government Code sections 15150–15167 establish the CA DOJ's responsibility for maintenance of the system. The CA DOJ publishes a *CLETS Policies, Practices, and Procedures* document that specifies, among other things, the fingerprint and background check requirements for access to CLETS-provided information. Entities that subscribe to CLETS service from the CA DOJ are responsible for their compliance. Also, FBI security policy addresses personnel who have access to criminal justice information. Screening requirements are outlined in the FBI's *Criminal Justice Information Services Security Policy*.

As a service to the courts and as a precaution, council's staff have implemented a policy of conducting CLETS-level background checks for any of its contractors who would be working in

¹ Depending on the type and location of their work, contractors may be subject to additional requirements, which will be specified by the Judicial Council's Agency CLETS Coordinator (ACC) who can be reached at Nicole.Rosa@jud.ca.gov.

Restricted Areas.² The council's Executive Office delegated to SO oversight of background checks for non-council employees working under contract with the council in Restricted Areas. SO worked with the CA DOJ and several council offices to define Restricted Areas, establish a procedure for providing related services, and identify the evaluation criteria that are listed in this policy.

WHAT IS THE APPLICATION PROCESS?

Council staff are responsible for requesting SO's services when needed. As part of the initial set-up process, they will be required to provide SO the following:

- A project code for chargeback of CA DOJ billing costs;
- A designated council contact; and
- A designated Contractor contact, as applicable.

SO and the council's Human Resources (HR) office share a single Originating Agency Identifier (ORI) number. HR receives the CA DOJ invoices and uses the project code that council staff provide to do chargebacks for the cost of the Contractor background checks.

SO will send the SO procedure to the designated council contact and Contractor contact, as applicable. The council contact and Contractor contact are responsible for explaining the restrictions to the "Applicants." They are also responsible for providing SO with the following.

- A background check authorization signed by the Applicant;
- A completed badge form, authorized by the council project manager; and
- A digital photograph of the Applicant that meets the requirements on the badge form.

SO will send the council contact or Contractor contact an "Applicant Packet" with the appropriate instructions and forms. The forms are prefilled with the council routing and billing information. The council contact or the Contractor contact gives the Applicant the paperwork so he or she can be fingerprinted. The Applicant should fingerprint within two weeks. It usually takes two weeks to three months for the CA DOJ to provide the background check results. Delays sometimes occur due to poor fingerprint quality, criminal information hits, or erroneous information submitted on the fingerprint transaction. SO will provide the council contact and Contractor contact with information about how Applicants can check the status of their submissions with the CA DOJ.

² The Court retains authority over access to its facility and this policy does not supersede the Court's responsibility, if a CLETS Subscribing Agency, to comply with FBI's *Criminal Justice Information Services Security Policy* and CA DOJ's *CLETS Policies, Practices and Procedures*.

WHAT ARE THE EVALUATION CRITERIA?

SO will review the results using the following evaluation criteria, which comply with FBI and CA DOJ regulations. Applicants are not suitable for unescorted access to a Restricted Area if an Applicant's background check reveals any of the following:

1. A felony conviction of any kind or felony charge pending court disposition (that includes arrest warrant for a felony charge); or
2. Any misdemeanor conviction *or* charge pending court disposition involving violence, weapons, theft, robbery, burglary, embezzlement, dishonesty, gang activity, drugs (excluding certain misdemeanor marijuana convictions more than two years from the date of such conviction, as specified in California Labor Code section 432.8), or moral turpitude.

Crimes of moral turpitude (that are not already described in the criteria above) include:

- Assaultive crimes involving false imprisonment, discharging a firearm, and shooting at an inhabited dwelling.
- Drug crimes involving maintaining a drug house, possessing heroin for sale, possessing marijuana for sale, selling drugs, and transporting a controlled substance.
- Escape crimes involving escape with or without violence and evading a peace officer.
- Property crimes involving arson, forgery, and receiving stolen property.
- Sex crimes involving indecent exposure, lewd acts on a child, pimping and pandering, and rape.
- Weapon crimes involving possessing or conspiring to possess an illegal firearm and possessing a deadly weapon with intent to assault.
- Other crimes involving bribery, extortion, kidnapping, perjury, and terrorist threat.

The following will be reviewed on an individual basis to determine suitability for unescorted access to a Restricted Area:

1. Misdemeanor convictions greater than 10 years old;
2. Felony or misdemeanor arrests without conviction and/or misdemeanor convictions, within the last 10 years that, when taken in total, establish reasonable doubt about the Contractor's suitability for access; or
3. Outstanding arrest warrants indicating possible fugitive status.

WHAT IS THE EVALUATION PROCESS?

Because the council qualifies as an Applicant Agency under California law, it receives the criminal record results electronically from the CA DOJ. SO follows the CA DOJ instructions to keep the information secure. It cannot share the criminal record result information.

Applicants Suitable for Unescorted Access to Restricted Areas

If an Applicant is suitable for unescorted access per the evaluation criteria, SO will notify the council contact(s) and Contractor contact(s), as applicable. SO will delete the criminal record results.

If not already submitted, the council contact or Contractor contact must provide SO with the Applicant's completed badge form and digital photograph. These will be used for badge purposes only. The digital photograph must meet the requirements on the badge request. If not already submitted, SO must also have the council project manager's authorization for a badge, via a signed badge form or e-mail approval.

SO will forward the Contractor's badge to the council contact or Contractor contact for distribution. The Contractor must wear the badge in a visible location at all times while in a Restricted Area, as visual confirmation that he or she is suitable for unescorted access.

Applicants Not Suitable for Unescorted Access to Restricted Areas

If an Applicant is not suitable per the evaluation criteria, SO will notify the council contact(s) and Contractor contact(s), as applicable, that the Applicant is not suitable for unescorted access to a Restricted Area. SO will mail the relevant criminal record results to the Applicant at the address he or she listed on the Live Scan form, then delete the criminal record results.

If the Applicant believes that the criminal record results contained an error, he or she must contact the CA DOJ's California Justice Information Services Division at 916-227-3849 to obtain information on how to correct the record. Information on this process is also available at the Office of the Attorney General's website at http://oag.ca.gov/fingerprints/security_faq.

SO must submit a No Longer Interested (NLI) form to the CA DOJ so that it does not receive subsequent arrest notifications or dispositions on Applicants deemed not suitable. For this reason, if the Applicant's record is corrected and the council project manager wants SO to re-evaluate, the Applicant will have to be re-fingerprinted.

Subsequent Arrests

After SO receives criminal record results, it automatically gets subsequent arrest notifications and dispositions. SO will continue to get this information until it submits a NLI form to the CA DOJ.

If SO is notified of a Contractor's arrest, it may reevaluate the person's suitability for unescorted access to Restricted Areas. SO reserves the right to change its determination of a person's suitability for unescorted access to Restricted Areas based on a subsequent arrest. If this occurs, SO will notify the council contact(s) and Contractor contact(s), as applicable, and request that the Contractor's badge be returned, that unescorted access to a Restricted Area be discontinued, and

that the Contractor's last-known address be provided. SO will mail the relevant criminal record results to the Contractor at that address, delete the criminal record results, and send an NLI.

Requests for Exceptions

Exceptions are rarely considered because the evaluation criteria implement mandatory FBI and CA DOJ regulations. If an Applicant receives notice that he or she is not suitable for access to Restricted Areas, the Contractor contact may ask the council project manager to request an exception from SO. The request must be in writing. It must include the Applicant's name and reason for the request. The Applicant will have to be re-fingerprinted. SO will send the Contractor contact a new Applicant Packet.

Before re-fingerprinting, the Applicant may want to consider options for cleaning up his or her criminal record. One resource is the Online Self-Help Center located on the California Judicial Branch's website at www.courts.ca.gov (specifically, the *Figuring out your options* section under *Cleaning Your Criminal Record*).

Once SO receives the criminal record results electronically from the CA DOJ, the SO supervisor will evaluate the results and notify the council project manager, council contact(s), and Contractor contact(s) of the decision.

WHAT IS THE BADGING PROCESS?

Badge Issuance

SO issues badges to Applicants suitable for unescorted access to restricted areas. These green badges help identify Contractors who have been deemed suitable by SO for unescorted access to Restricted Areas. The badges do not provide any special privileges to Contractors (for example, bypassing entrance security screening). They do not allow access to secured council facilities.

The badges that allow access to the council buildings are part of a separate SO program. Council building access is only granted to people who will work in the building regularly, and it must be applied for in person. The council contact or designee may escort the Contractor to the SO Badge Room to complete the required form and have a photograph taken.

Badge Replacement

SO replaces lost, stolen, and damaged badges. The council contact or Contractor contact must notify SO when a replacement is needed.

Badge Return

When an approved Applicant is no longer employed by the Contractor company or is reassigned so that he or she no longer needs unescorted access to a Restricted Area, the following must happen. The council contact or Contractor contact must promptly inform SO, collect the

Contractor's badge, and return it to SO. SO must fax or mail an NLI form to the CA DOJ so that it does not receive subsequent arrest notifications or subsequent arrest dispositions.

QUESTIONS AND COMPLAINTS

SO communicates directly with the council contact or Contractor contact only. Any questions or complaints should be routed to the council contact or Contractor contact (for example, questions or complaints relating to the retention, day-to-day management, or termination of Contractors).

ADDITIONAL RESOURCES

Council staff may contact SO for current versions of the following documents:

- Memo to contacts summarizing SO procedure
- Contractor Background Check Authorization
- Contractor Badge Information/Authorization

REFERENCES

- California Government Code sections 15150–15167
- Federal Bureau of Investigation *Criminal Justice Information Services Security Policy*
- California Department of Justice *CLETS Policies, Practices, and Procedures*
- Office of the Attorney General's website at http://oag.ca.gov/fingerprints/security_faq