

PUBLIC COMMENTS AND DEPARTMENT OF JUSTICE RESPONSES

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<p>“[T]he scope of criminal background information that will be disclosed under this program and the potential long-term impact on individuals with criminal records”</p>	<p>1</p>	<p>In California, individuals seeking to clear, vacate, or expunge their records often face significant barriers, including costly legal fees. This creates an inequitable system where individuals who do not have financial resources are left without the opportunity to clear their records, making it difficult for them to gain employment and reintegrate into society. This, in turn, can lead to housing insecurity, unemployment, and other social issues.</p> <p>[I]f we are to adopt policies that expand access to criminal record information, we should simultaneously consider implementing or improving accessible resources for individuals who seek to clear their records and demonstrate rehabilitation. This would help prevent long-standing discrimination against individuals who have already served their time and are working to become productive members of society. Additionally, providing clear pathways for record expungement would allow us to identify individuals who are genuinely committed to making positive changes in their lives, while still protecting vulnerable populations.</p> <p>[W]hile I support the intent of the CalVECHS Program to safeguard children, the elderly, and individuals with disabilities, I encourage the California Department of Justice to also explore</p>	<p>No change has been made in response to this comment.</p> <p>The barriers that individuals face to “clear, vacate, or expunge” their criminal records, the difficulties individuals with criminal records face with housing and employment, and expansion of resources for individuals with criminal records are outside the scope of this rulemaking package.</p> <p>The Legislature has already determined that certain human resource agencies, employers, and organizations should have access to criminal record information to protect vulnerable populations in their care and supervision. Penal Code section 11105.3, allows DOJ to disseminate state and federal-level criminal offender record information (CORI) to those qualified entities. The rulemaking package does not establish these requirements, it implements the requirements established by state and federal law.</p>

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		<p>solutions that balance public safety with rehabilitation opportunities for individuals with criminal histories. Strengthening access to record-clearing resources can ultimately contribute to reducing recidivism, promoting employment opportunities, and fostering safer and healthier communities.</p>	
§ 405. CalVECHS Waiver	2	<p>[T]he phrase “and annually thereafter” [should] be deleted....</p> <p>The Initial Statement of Reasons provides no information on why this annual requirement is necessary[.]</p> <p>The CalVECHS Waiver Agreement already provides the applicant with notice of why fingerprint information is being sought and that such information may be shared with others at any time.</p> <p>A sentence could easily be inserted into the Waiver Agreement that the applicant gives continuing authorization for the subject agencies to acquire CORI and to share such information until such time as the applicant revokes the authorization in writing.</p> <p>....</p> <p>The practical negative effects of leaving “and annually thereafter” [are] [I]f all volunteers were required annually to sign</p>	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2),</p>

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		<p>the waiver, there is a strong possibility that due to a variety of reasons, the volunteers may fail to sign annually through their own inadvertence, avoidance, vacation, or sickness (at the time the signature is due) in spite of the organization’s best attempts to follow up. This situation WOULD CAUSE the organization’s volunteer-run programs to shut down if the annual waiver could not be obtained from each volunteer critical to the program operations.</p> <p>[T]he time to track down signatures of each volunteer in an organization that has many volunteers would create an additional heavy administration load....</p> <p>Volunteers faced with annually signing the same document may consider that to be wearisome and give them a reason to not to continue serving, which ultimately hurts the organization relying on volunteer help.</p>	<p>subparagraph (C) reads, “The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the state and federal level criminal history information to the human resource agency or employer.” The Initial Statement of Reasons (ISOR) referred to these requirements.</p> <p>The rulemaking package does not establish these requirements, it implements the requirements established by state and federal law.</p>
The limited response	3.1	[Assembly Bill (AB) 506] restricts the type and sources of Criminal Offender Records Information (“CORI”) available from the Department via the Live Scan service exclusively to California-based offenses and convictions, and does not include checks of any Criminal Sexual Offender Registries.	<p>No change has been made in response to this comment.</p> <p>Though youth organizations that fingerprint pursuant to AB 506 have historically received a sanitized federal response that excludes out-of-state criminal history information, in implementing the CalVECHS</p>

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			<p>Program the rulemaking package expands agencies' access to federal CORI that they would not previously have been authorized to receive.</p> <p>Further, the state-level criminal history background check authorized by Penal Code section 11105.3 currently includes and will continue to include sex offender registration status, pursuant to subdivision (n) of Penal Code section 11105.</p>
The cost	3.2	<p>One of the particular challenges this poses to many churches, especially smaller ones, is the cost of compliance. Although the Department does not charge nonprofit organizations to conduct its state-based CORI background checks, the mere expense of "rolling" a person's fingerprints, which is typically \$25-\$30 per person, can be overwhelming. Now that the state is no longer funding the organization which provided no-cost training via its MandatedReporterCA.com website, the additional cost for Mandated Reporter training adds to this burden ...</p>	<p>No change has been made in response to this comment.</p> <p>The mandated reporter requirements are not administered through the Department of Justice (DOJ).</p> <p>The rulemaking package imposes no costs on individuals or CalVECHS participating agencies.</p>
The potential exclusion of youth organizations and churches	3.3	<p>[SB 135] only addresses the "existing" authority that "a human resource agency or an employer" has concerning applicant criminal histories. Not all churches are</p>	<p>No change has been made in response to this comment.</p>

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		<p>“employers” in the technical sense, although they may be “Youth Service Organizations” by definition because they are child-serving entities.</p> <p>....</p> <p>[I]t is uncertain that the Department’s proposed rules would extend beyond the limitations of “a human resource agency or an employer” to Youth Service Organizations and allow them to participate in CalVECHS on a voluntary basis.</p> <p>....</p> <p>My concern is with the vagueness of the definition of a “qualified entity.” By what measure(s) will the Department determine whether an entity is “qualified” or not? Section 11105.3 of the Penal Code uses only the phrase “human resource agency or employer” and does not specifically reference Youth Service Organizations. Does an entity “qualify” merely on the basis that it provides services to children? Unless there are clear, unambiguous, and unbiased criteria by which a “qualified entity” may be measured and defined, I believe a very real potential exists to discriminate against faith-based organizations [sic] and their ability to adequately screen potential employees and/or volunteers for child predators or other persons who should not have access to or be in contact with children.</p> <p>....</p>	<p>As stated in the Revised Notice of Proposed Rulemaking, regarding the concern that the proposed regulations would discriminate against churches and faith-based groups and organizations providing services to children, and that such entities would not be allowed to participate in the CalVECHS Program. If a church or faith-based group or organization provides services to children, they are a qualified entity under the proposed regulation and would be eligible to receive federal CORI if they choose to enroll in the CalVECHS Program.</p> <p>The intent of the rulemaking package is to capture the populations that fingerprint pursuant to Penal Code section 11105.3 within the CalVECHS Program.</p> <p>The definition of “qualified entity” in the rulemaking package is derived from the National Child Protection Act, as amended by the Volunteers for Children Act (NCPA/VCA) (34 U.S. Code § 40104). It is designed to include the entities that are allowed to participate pursuant to state and federal law.</p> <p>Subdivisions (a) and (b) of Penal Code section 11105.3 authorize fingerprinting by human resource</p>

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		<p>I believe all DOJ-approved Youth Service Organization Applicant Agencies should be specifically referenced as “qualified” entities and be allowed to choose whether or not to contract with the Department to request and receive additional federal CORI.</p>	<p>agencies and “employers,” as they are uniquely defined in subdivision (f) of that section (“any nonprofit corporation or other organization specified by the Attorney General that employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children”). Youth service organizations, as they are defined in subdivision (f) of Penal Code section 11105.3 and Business and Professions Code section 18975, fall under the definition of “employers.” And each of these would be considered a “qualified entity,” as it is defined in the rulemaking package.</p> <p>The rulemaking package uses the intentionally inclusive term “qualified entity” rather than attempting to list specific organization types, which would likely result in the unintentional exclusion of one or another type of entity that serves children, the elderly, or individuals with disabilities.</p>
Criminal history results	4.1	[I]t would be greatly beneficial if international background reports could also be included in the search	No change has been made in response to this comment.

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		process.	The comprehensiveness of criminal record databases is beyond the scope of this rulemaking package.
§ 405. CalVECHS Waiver	4.2	<p>[W]e have concerns regarding the requirement for employees and especially, volunteers to submit an annual waiver. Our entities rely heavily on volunteers, and obtaining necessary documentation from them is often challenging. Requiring an annual waiver submission seems inefficient and creates unnecessary barriers for non-profits. It is already difficult to find qualified, willing individuals who generously dedicate their time to service. Additional regulatory and administrative processes would place further strain on our overburdened employees and may discourage potential volunteers from engaging in our work. Given the high turnover rates in employment and volunteer positions, it is crucial to develop a system that facilitates rather than hinders employing and volunteer onboarding and retention.</p> <p>We encourage you to explore ... implementing a one-time waiver for prospective employees and volunteers that remains valid throughout their tenure.</p> <p>....</p> <p>Reducing administrative burdens will enable non-profits to continue delivering</p>	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, “The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the state and federal level criminal</p>

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		essential services to their communities without undue challenges.	<p>history information to the human resource agency or employer.”</p> <p>The rulemaking package does not establish these requirements, it enables the implementation of requirements established by state and federal law.</p>
§ 406. Request for Live Scan Service (CalVECHS), BCIA 8016VECHS	5.1	<p>In the Application Submission section of form BCIA 8016VECHS ... the request for the applicant to enter an “Authorized Applicant Type” may be confusing to some people completing the form because they will not know what the Authorized Applicant Types are. We recommend adopting checkboxes instead followed by “Employee” and “Volunteer.”</p> <p>....</p> <p>While [VECHS/EMPLOYEE 11105.3 PC or VECHS/VOLUNTEER 11105.3 PC] could be used if necessary, the inclusion of VECHS is redundant in that it has already been included in the form number ... and because most people completing the form will not understand the 11105.3 PC refers to section 11105.3 of the California Penal Code. Additionally, the term “Authorized” could be deleted for additional clarity and spacing concerns.</p>	<p>No change has been made in response to this comment.</p> <p>The “Authorized Applicant Type” field of the BCIA 8016VECHS form should be pre-filled by the agency. When a Live Scan operator inputs the agency’s ORI into the Live Scan device the “Authorized Applicant Type” field populates a drop-down menu with only those applicant types that the agency is authorized to fingerprint, leaving little room for error.</p> <p>As stated in the ISOR, the Authorized Applicant Type is associated with a population that the agency is authorized to fingerprint. For instance, simply putting employee or volunteer wouldn’t demonstrate to DOJ and the FBI what authorized applicant type is being background checked, since agencies may conduct background checks for employees or volunteers</p>

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			<p>under various statutes and authorities. Using VECHS/EMPLOYEE 11105.3 PC and VECHS/VOLUNTEER 11105.3 provides DOJ and the FBI with what the authorized applicant type is- those that are being background checked under VECHS, as an employee or volunteer, and under the authorizing statute.</p> <p>Additionally, both the DOJ and FBI systems require the authorizing statutory codes to be included within the applicant type. Thus, the applicant type must follow this format: VECHS/EMPLOYEE 11105.3 PC and VECHS/VOLUNTEER 11105.3.</p>
§ 406. Request for Live Scan Service (CalVECHS), BCIA 8016VECHS	5.2	[W]e are concerned applicants may believe the ["Address for Receiving Copy of Criminal History"] is the Qualified Entity address.... This may lead to inaccurate Live Scan requests and/or increased confusion and questions to the Qualified Entity.... We would recommend changing the proposed phrase to read: "Address for Receiving a Copy of Your Criminal History...."	The "Address for Receiving Copy of Criminal History" verbiage on the BCIA 8016VECHS was developed in response to subdivision (b) of Penal Code section 11105.3, which stipulates that the DOJ "shall not require the applicant's residence address for any request for records" under subdivision (a), which requires DOJ to mail a copy of the results to the individual. To comply with the requirements of subdivision (a), DOJ must request an address to

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			mail a copy of the criminal history to the individual, but individuals are not required to provide their home address.
§ 401, subdivision (d)	5.3	We would suggest adding the phrase “a person” between the words “means” and the words “60 years of age or older.” This will make section (d) consistent with California Welfare and Institutions Code Section 9018 and more consistent with subsections (c), (e), and (f) of Section 401 of the Regulations.	The definition of “elderly” was amended to include “a person” in response to this comment.
Penal Code section 11105.3, subdivision (j)	5.4	[W]e would suggest establishing in the regulations a reasonable period of time for notifying the department to terminate the subsequent arrest notification service so that youth organizations will have a clear understanding of what amount of time the department considers immediately... [and] the method the department would like the youth organization to use to notify the department to terminate the subsequent arrest notification service. [W]e would suggest establishing in the regulations the type of evidence the organization needs to maintain to establish that it has not less than every six months verified that each individual	No change has been made in response to this comment. All applicant agencies, including CalVECHS qualified entities, must adhere to the requirements of Penal Code section 11105.2 for terminating subsequent arrest and disposition notification. These and the requirements of Penal Code section 11105.3, subdivision (j), are outside the scope of this rulemaking package.

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		for whom the service has not been terminated, is still [active.]	
Federal background check requirement for youth service organizations (YSOs)	6.1	<p>The DOJ Should Delay or Suspend Enforcement of the FBI Background Check Requirement.</p> <p>[T]he FBI will not give YSOs the results of these background checks without the data subject’s written consent....</p> <p>....</p> <p>[B]y relying on the FBI, California cedes responsibility for background checks to the federal government.</p> <p>....</p> <p>This combination of federal oversight plus burdensome costs of compliance... will have a direct and disproportionate impact on underserved communities, especially minority groups and ethnicities, by limiting their willingness or ability to volunteer with youth and children, all with little or no evidence that adding FBI checks will protect any more children than the state’s Live Scan background checks already do.</p> <p>....</p> <p>[T]he Department should ... study these impacts and ensure that the solution is both workable and effective but not discriminatory.</p>	<p>No change has been made in response to this comment.</p> <p>Employees and volunteers of youth service organizations are required to undergo fingerprint-based state <i>and national</i> criminal history background checks pursuant to Business and Professions Code section 18975. The federal-level criminal history background check requirement of youth service organizations has been in full effect since January 1, 2024, and DOJ cannot offer youth organizations an alternative sex offender registry search only.</p> <p>The rulemaking package does not establish the requirement to have an individual provide written consent, rather Penal Code section 11105.3, subdivision (b), and the NCPA/VCA, codified in United States Code, title 34, section 40102 et seq, do.</p> <p>California is still responsible for California state level background checks, but the FBI is responsible</p>

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		<p>We urge DOJ to ... Indefinitely stay enforcement of the FBI background check requirement pending further study.</p> <p>[Or] offer a less burdensome alternative that achieves the purposes of a federal background check without the need for waivers. For example, Utah recently enacted a law that requires youth organizations to check state and national sex offender registries before any volunteer can serve with youth in Utah.</p>	<p>for conducting federal level background checks.</p>
Cost of compliance	6.2	<p>The Department's proposed fix – CalVECHS – will itself impose unintended burdens on YSOs and their volunteers seeking to comply.</p> <p>....</p> <p>[CalVECHS] will substantially increase the cost of compliance for large volunteer organizations by requiring repeated, written consents for each volunteer, as well as administrative tracking.</p>	<p>No change has been made in response to this comment.</p> <p>Though requirements established by state and federal law, such as the annual recertification of the waiver, could result in increased administrative obligations, the rulemaking package does not impose these requirements, Penal Code section 11105.3, subdivision (b), and the NCPA/VCA, codified in United States Code, title 34, section 40102 et seq, do. Compliance with, and the impacts and requirements of, Penal Code section 11105.3, subdivision (b), and Business and Professions Code section 18975 are beyond the scope of this rulemaking package.</p>

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§ 405. CalVECHS Waiver	6.3	<p>Section 405 requires organizations to collect and retain the signed CalVECHS Waiver Agreement for each volunteer, on an annual basis, and to retain the same for at least three years or until an audit. The current Live Scan process does not impose this burden.... Adding a separate waiver collection requirement for youth organizations introduces significant administrative burdens for large scale volunteer organizations.</p> <p>....</p> <p>[W]e urge DOJ to... Take the position that because the individual is submitting the Live Scan form with the FBI box checked, the individual is already consenting to have their federal criminal record information shared with the designated YSO.</p>	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>The rulemaking package does not establish the required waiver and DOJ cannot accept the proposed changes because they do not comply with the law.</p>
§ 405. CalVECHS Waiver	6.4	<p>For organizations with tens of thousands of volunteers and high turnover, collection of waivers annually is administratively burdensome and unnecessary where fingerprinting is only performed once.</p> <p>We urge DOJ to ... Include a one-time waiver within the Live Scan form that is</p>	<p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, "The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the</p>

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		completed at the time of fingerprinting. [And] recognize the initial complications with implementation of the FBI background check requirement and sharing of data and clarify that these requirements, including the CalVECHS waiver, apply only on a prospective basis.	state and federal level criminal history information to the human resource agency or employer.” The rulemaking package does not establish the annual recertification requirements of the waiver and DOJ cannot accept the proposed changes because they do not comply with the law.
Whether CalVECHS participation is voluntary or required	6.5	Section 402 states that qualified entities “may apply to enroll” in CalVECHS, indicating the program is voluntary. However, [department guidance] states that all currently authorized entities “must be enrolled in CalVECHS by the end of 2026” to continue submitting fingerprints and receiving state and federal CORI. We urge DOJ to ... Revise Section 402 to clearly state that CalVECHS is voluntary and entities that use their existing policies may continue to process background checks.	No change has been made in response to this comment. CalVECHS participation is voluntary for qualified entities that are not statutorily <i>mandated</i> to fingerprint employees or volunteers. However, for entities whose employees and/or volunteers are mandated to undergo a fingerprint-based national criminal history background check pursuant to a statute that references Penal Code section 11105.3, or for those agencies who are not statutorily mandated to do so but opt to background check their employees and/or volunteers under Penal Code section 11105.3, CalVECHS is the only option for doing so since it implements the requirements in

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			<p>subdivision (b) of Penal Code section 11105.3.</p> <p>Federal law (Public Law 92-544) restricts non-governmental agencies (NGAs) from receiving federal CORI except through a VECHS program that leverages the authority of the NCPA/VCA.</p> <p>After 2026, the FBI will not disseminate any kind of federal response to NGAs that are authorized pursuant to Penal Code section 11105.3, such as AB 506 youth orgs, <i>unless</i> that NGA is participating in CalVECHS.</p>
Enrollment process/forms	7	<p>I was surprised to be required to download 4 multi-page forms, fill them out with a pdf filler, PRINT them to sign, then scan them all, and upload them back into my account in the AAJC portal. The PDF forms were weirdly formatted, auto-changing the font size to be impossibly small and there was no way for me to edit that. Made for a very frustrating and antiquated process. It would be ideal if the CA DOJ made this a digital process. It shouldn't be this hard for businesses to enroll in CalVECHS. All of this could have been accomplished through signature with verification of my identity with an ID or something to confirm I am</p>	<p>No change has been made in response to this comment.</p> <p>The functionality of the forms included in this package is limited until the forms are approved and finalized in conjunction with the rulemaking package. Forms were considered a more cost-effective way to implement the requirements of Penal Code section 11105.3, rather than creating a new digital platform. Additionally, federal and state law require a waiver, and the proposed alternative would not be compliant with those requirements.</p>

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		the owner of the business, and would have taken a quarter of the time.	<p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, "The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the state and federal level criminal history information to the human resource agency or employer."</p> <p>Additionally, if DOJ allowed a business owner to only submit their ID to request enrollment in CalVECHS, such a request and process would not have the information DOJ needs to determine</p>

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			if the entity is authorized to receive background checks. The proposed form includes the fields of information necessary to process entities' requests to conduct background checks.
§ 405. CalVECHS Waiver	8	<p>Sending out thousands of forms, whether it's printed or electronically, and also requiring organizations to properly apply NLI to individuals in the AAJC portal seems like a redundant process.</p> <p>....</p> <p>A possible solution may be for individuals to submit a written notice to organizations to remove such records, or to require organizations that if certain individuals are no longer active that removal be instituted within a certain time frame....</p> <p>[A]pplying the responsibility to organizations, especially non-profits, to maintain proper records without a system to support or ensure compliance does not seem to support the DOJ/FBI's commitment to safety, protection, and proper record keeping. My question, ultimately, is whether the DOJ/FBI would be able to provide an electronic system that already utilizes current records (CJIS, AAJC) to follow-up on applicants and individuals to maintain annual compliance?</p>	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, "The human resource agency or employer shall maintain a waiver signed annually</p>

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		<p>.... [W]ould it be possible to extend the requirement for waivers from an annual basis to 3 years?</p>	<p>by the applicant, employee, or volunteer allowing the release of the state and federal level criminal history information to the human resource agency or employer.”</p> <p>The rulemaking package does not establish these requirements, it implements the requirements established by state and federal law.</p> <p>The required waiver and its annual recertification are distinct from the requirement that any agency that receives subsequent arrest and disposition notifications must notify DOJ to discontinue service when the relationship between the agency and the applicant is terminated, which is established in Penal Code section 11105.2 and is outside the scope of this rulemaking package.</p> <p>Forms were considered a more cost effective way to implement the requirements of Penal Code section 11105.3, rather than creating a new electronic system, as DOJ does not have the capacity to notify agencies that a specific applicant is nearing their hiring date anniversary using the current systems through which agencies access CORI.</p> <p>CalVECHS participating agencies may opt to select an annual refresh</p>

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			date where they collect updated forms from all applicants, rather than tracking unique hiring date anniversaries.
§ 401, subdivision (f)	9.1	<p>In subdivision (f)(1) of this definitions section, a “covered individual” is defined as a “current or prospective employee.” The term “prospective” is not further defined, leaving it unclear whether the individual must have been made an offer of employment, or whether prospective in this context means that the person has applied for employment and is under consideration.</p> <p>Due to the critical nature of background checks for positions that entail supervisory responsibility over children, many dioceses conduct the background check as part of their screening process in order to determine whether to make an offer of employment. Moreover, note that Penal Code section 1105.3 itself repeatedly includes “applicant, employee, or volunteer” in its scope.</p> <p>We respectfully suggest, therefore, that section 401 be altered in some manner to clarify that a “covered individual” includes an applicant for a position that involves interaction with, and supervisory authority over, children.</p>	<p>The DOJ included applicant in the definition of a covered individual, and deleted the word “prospective” in response to this comment. The definition of covered individual already includes supervision of children, since it includes reference to a qualified entity, which is one that provides care, which is the “provision of services, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.”</p> <p>Agencies and organizations operating in California, including CalVECHS qualified entities, must adhere to state and federal laws governing the use of criminal history information in hiring, including but not limited to Government Code section 12952 and Labor Code section 432.7. These requirements are outside the scope of this rulemaking package. Additionally, whether individuals must have been made an offer of employment before undergoing a background check, or</p>

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			have simply applied for employment, is a legal question and commenters should seek legal counsel.
§ 403. Determination by the Department	9.2	<p>In subdivision (b) of section 403, the proposed text states that the Department may deny enrollment to agencies with applicants “who are required by statute” to undergo criminal background checks. As to this provision, we simply ask the question: if an entity is required by statute to conduct a criminal background check, under what authority may the Department deny enrollment to that entity.</p> <p>There are hundreds of Catholic schools across the State of California, and like all schools — public and private alike — Education Code section 44237 mandates that the school “shall require each applicant for employment in a position requiring contact with minor pupils to submit two sets of fingerprints prepared for submittal by the employer to the Department of Justice for the purpose of obtaining criminal record summary information from the Department of Justice and the Federal Bureau of Investigation.” It is not clear how the proposed regulation can be reconciled with those provisions.</p>	<p>Subdivision (b) of section 403 has been revised to clarify that DOJ will not deny CalVECHS enrollment to qualified entities, but to agencies that are approved and authorized to receive a federal response for their applicants by a statute other than Penal Code section 11105.3.</p> <p>As amended, subdivision (b) of section 403 reads, “The Department shall deny enrollment to agencies with applicants who are required to undergo fingerprint-based state and national criminal history background checks pursuant to a statute approved by the Federal Bureau of Investigation, <i>exclusive of section 11105.3 of the Penal Code</i>” (emphasis added).</p> <p>Entities that fingerprint pursuant to Penal Code section 11105.3 will not be denied enrollment in the CalVECHS Program.</p> <p>Authorized applicant agencies with applicants who are required to</p>

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			undergo fingerprint-based state and national criminal history checks pursuant to <i>other</i> statutes, such as public and private schools conducting mandatory background checks under Education Code section 44237, will continue to be served by DOJ through the standard process associated with that statutory authority, outside of the CalVECHS Program.
§ 404. Compliance Audit	9.3	<p>Section 404 adds a mandate on the Department to conduct audits of all qualified entities at least once every three years.</p> <p>....</p> <p>[W]e note (1) Penal Code section 11105.3(b)(2)(B) only provides that the Department “may periodically audit” for compliance, and (2) as a historical matter, audits by the Department have not been conducted with the proposed frequency.</p> <p>[A] short, three-year rotation for such audits has the potential for imposing an undue administrative burden for the responding qualified entity. We would propose that changing section 404 to track section 11105.3, by providing for “periodic audits” at the discretion of the Department, would still enshrine the requirement for compliance audits</p>	<p>No change has been made in response to this comment.</p> <p>Section 404, which reads, “The Department shall conduct triennial audits of qualified entities to ensure compliance with these regulations,” ensures that CalVECHS participating agencies are audited periodically for adherence to the CalVECHS regulations (e.g., maintenance of the CalVECHS Waiver Agreement). The three-year audit cycle is how DOJ chose to define what “periodically” means, and DOJ chose to define what “periodically” means to give the regulated parties notice of how often they could be expected to be audited.</p> <p>A three-year audit cycle matches DOJ’s auditing schedule of all</p>

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		without a strict mandate that it take place every three years. In the alternative, requiring audits on some longer appropriate time period, perhaps every five years, could also acceptably serve that purpose.	authorized applicant agencies and conforms with the requirements of state and federal laws governing CORI security. The FBI requires all state identification bureaus that access the Interstate Identification Index and Next Generation Identification System for non-criminal justice purposes to complete triennial audits of authorized applicant agencies.
§ 405. CalVECHS Waiver	9.4	<p>Section 405 would require every covered individual to complete and sign a new and completely separate CalVECHS Waiver Agreement both prior to fingerprinting and then annually thereafter. The burden that these requirements impose on both the applicants and the qualified entities would be significant, and it is not clear how having a separate form and mandating annual accumulation of additional copies of that same form advances the general purpose of the criminal background check statutes or the specific CalVECHS program itself.</p> <p>We urge the Department to consider alternative methods of demonstrating the applicant’s knowing and intentional release of Criminal Offender Record Information (“CORI”). For example, the Department could either deem, via</p>	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant.</p>

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		<p>regulation, the LiveScan request form to constitute such a waiver, to achieve efficiency and multiple goals in a single document. A modification to the LiveScan form to include a waiver provision might also be an option.</p> <p>Similarly, we urge the Department to also consider having the LiveScan request form be not only consent to the initial release of CORI, but also be deemed consent by the applicant that the waiver automatically renew and be considered a recertification until such time as the applicant either revokes the authorization or discontinues any association with the qualified entity as an employee or volunteer. If the Department feels there absolutely must be a separate CalVECHS Waiver Agreement, we would urge it to consider editing the form to add such advance consent to automatic renewal recertification provisions.</p>	<p>Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, “The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the state and federal level criminal history information to the human resource agency or employer.”</p> <p>The rulemaking package does not establish these requirements, it enables the implementation of requirements established by state and federal law.</p>

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Whether CalVECHS replaces current requirements and procedures	10.1	<p>[W]ith this new option available, my understanding is that we can elect in as a nonprofit organization that we can elect in to receive this ... nationwide background check information is this something that would replace how we're doing California DOJ background checks which we are paying for at this point in time?</p> <p>Does [opting into CalVECHS] preclude us from needing to do the California check, which is the \$15? As this would help all Girl Scout Councils with ongoing financial impact to comply with AB 506.</p>	<p>No change has been made in response to this comment.</p> <p>CalVECHS enrollment will be necessary for entities whose employees and/or volunteers are mandated to undergo a fingerprint-based national criminal history background check pursuant to a statute that references Penal Code section 11105.3.</p> <p>Federal law (Public Law 92-544) restricts NGAs from receiving federal CORI except through a VECHS program that leverages the authority of the NCPA/VCA.</p> <p>After 2026, the FBI will not disseminate any kind of federal response to NGAs that are authorized pursuant to Penal Code section 11105.3, such as AB 506 youth orgs, <i>unless</i> that NGA is participating in CalVECHS.</p> <p>The rulemaking package imposes no costs on individuals or CalVECHS participating agencies.</p> <p>Standard state and federal fingerprint processing fees will apply, including reduced costs for non-profit organizations. For non-profit youth organizations and human resource agencies, the state fingerprint</p>

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			processing fee is \$0 and the federal fingerprint processing fee is \$15.
§ 405. CalVECHS Waiver	10.2	[How can we] mitigate the challenges around that annual need to sign the annual waiver[?]	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34, section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, “The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the state and federal level criminal history information to the human resource agency or employer.”</p>

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			The rulemaking package does not establish these requirements, it enables the implementation of requirements established by state and federal law.
Federal background check requirement for youth service organizations (YSOs)	11.1	<p>We recommend that you delay or suspend enforcement of the FBI background check requirement.</p> <p>....</p> <p>Our State added the FBI background check requirement [...] before taking steps to make sure that youth service organizations could receive the results.</p> <p>....</p> <p>We believe this combination of Federal involvement and oversight, plus the burden of the compliance costs, will have a direct and disproportionate impact on our underserved communities by limiting their willingness and even their ability to volunteer with youth and children. And all this with honestly, little or no evidence that adding FBI checks will protect more children than the State background checks already do.</p> <p>California provides results remarkably fast. Waiting for the results of FBI background checks in contrast will take longer and prevent organizations like our Church from being able to get needed volunteers in a timely manner. So rather than rush in with a proposed solution that</p>	<p>No change has been made in response to this comment.</p> <p>Employees and volunteers of youth service organizations are required to undergo fingerprint-based state <i>and national</i> criminal history background checks pursuant to Business and Professions Code section 18975. The federal-level criminal history background check requirement of youth service organizations has been in full effect since January 1, 2024. DOJ cannot offer youth organizations an alternative sex offender registry search only.</p> <p>California is still responsible for California state level background checks, but the FBI is responsible for conducting federal level background checks.</p>

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		<p>will increase burdens on youth service organizations and their volunteers and deprive young people of needed adult mentors in diverse communities, we ask the Department at this time to take some time to study these impacts and ensure that the solution is both workable and effective.</p> <p>... Utah recently enacted a law that requires youth organizations to check state and national sex offender registries before any volunteer can serve with youth. In Utah, this approach provides an enormous advantage to nonprofit volunteer organizations like the Church, allowing them to conduct the checks privately, without payment of fees and potential delays in processing information, and without deterring individuals who might otherwise volunteer from serving for fear of an onerous public background check process.</p>	
Cost of compliance	11.2	<p>...the Department's proposed regulations [...] will impose unintended burdens on youth service organizations like ours and their volunteers.</p> <p>...tens of thousands of church volunteers will be required right now to provide their fingerprints to the Federal Government.</p>	<p>No change has been made in response to this comment.</p> <p>The federal-level criminal history background check requirement of youth service organizations has been in effect since January 1, 2024, and employees and volunteers of existing authorized agencies are not required to immediately resubmit fingerprints</p>

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		<p>...the Department's proposed solution will substantially increase the cost of compliance for the church and other large volunteer organizations by requiring not just one or one time written, consents by volunteers, but repeated over and over again.</p>	<p>after an agency enrolls in the CalVECHS Program.</p> <p>The rulemaking package does not establish the requirement to have an individual provide written consent, rather Penal Code section 11105.3, subdivision (b), and the NCPA/VCA, codified in United States Code, title 34, section 40102 et seq, do.</p> <p>Though requirements established by state and federal law, such as the annual recertification of the waiver, could result in increased administrative obligations, the rulemaking package does not impose these requirements, Penal Code section 11105.3, subdivision (b), and the NCPA/VCA, codified in United States Code, title 34, section 40102 et seq, do. Compliance with, and the impacts and requirements of, Penal Code section 11105.3, subdivision (b), and Business and Professions Code section 18975 are beyond the scope of this rulemaking package.</p>
§ 405. CalVECHS Waiver	11.3	<p>...the proposed regulation requires organizations to annually collect and retain the signed CalVECHS waiver agreement for each volunteer and to retain it for at least 3 years thereafter or until an audit is completed.</p>	<p>No change has been made in response to this comment.</p> <p>Federal law establishes requirements of state-run programs authorized under United States Code title 34,</p>

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		<p>Our recommendation to you is that you treat the live scan form itself as the waiver.</p> <p>....</p> <p>By filling out the live scan form and checking the FBI box [...] the volunteer understands that their information is going to be submitted to the Federal Government and not just the State government. In other words, the volunteer is explicitly agreeing to provide the results of the federal background check to the authorized agency.</p> <p>....If you think that an additional waiver, language, or additional waiver commitment is needed, add that kind of thing to the [Request for Live Scan Service] form, so that it will reduce the burdens, just the administrative and paperwork burdens alone on our church and other similar organizations.</p>	<p>section 40102, such as CalVECHS. One of these requirements is that a qualified entity must collect from each applicant a signed consent form that, among other things, requires the individual to either affirm that they have not been convicted of a crime or describe any criminal convictions that appear on their criminal history record. The CalVECHS Waiver Agreement (BCIA 9018) fulfills this federal requirement.</p> <p>State law requires this form to be recertified annually by the applicant. Penal Code section 11105.3, subdivision (b), paragraph (2), subparagraph (C) reads, "The human resource agency or employer shall maintain a waiver signed annually by the applicant, employee, or volunteer allowing the release of the state and federal level criminal history information to the human resource agency or employer."</p> <p>The rulemaking package does not establish the waiver or annual recertification requirements and DOJ cannot accept the proposed changes because they do not comply with the law.</p>

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Whether CalVECHS participation is voluntary or required	11.4	<p>...make CalVECHS voluntary, not mandatory.</p> <p>The proposed regulation at section 402 states that qualified entities “may apply to enroll” in CalVECHS, indicating the program is voluntary.</p> <p>However, the Department’s FAQ... states that all currently authorized entities “must be enrolled in CalVECHS by the end of 2026” to continue submitting fingerprints and receive State and Federal CORI, which would indicate it's mandatory, not voluntary.</p> <p>...we urge the Department to revise Section 402 to clearly state that CalVECHS is voluntary and entities that use their existing policies may continue to process background checks in that manner. For example, offer a less burdensome alternative that achieves the purposes of a federal background check without the need for the administrative burden of these waivers.</p>	<p>No change has been made in response to this comment.</p> <p>CalVECHS participation is voluntary for qualified entities that are not statutorily <i>mandated</i> to fingerprint employees or volunteers.</p> <p>However, for entities whose employees and/or volunteers are mandated to undergo a fingerprint-based national criminal history background check pursuant to a statute that references Penal Code section 11105.3, or for those agencies who are not statutorily mandated to do so but opt to background check their employees and/or volunteers under Penal Code section 11105.3, CalVECHS is the only option for doing so since it implements the requirements in subdivision (b) of Penal Code section 11105.3.</p> <p>Federal law (Public Law 92-544) restricts non-governmental agencies (NGAs) from receiving federal CORI except through a VECHS program that leverages the authority of the NCPA/VCA.</p> <p>After 2026, the FBI will not disseminate any kind of federal response to NGAs that are authorized pursuant to Penal Code</p>

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			section 11105.3, such as AB 506 youth orgs, <i>unless</i> that NGA is participating in CalVECHS.

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DOJ response to previous comments	12	While we are very grateful for Department of Justice staff and their willingness to listen to the concerns expressed by the CCC, we respectfully do not believe that the modified proposed regulations address all of the concerns we expressed in detail in our initial comment letter, dated June 19, 2025. Accordingly, we attach those comments again, and incorporate them here by reference, in hopes that the Department will review and take into consideration the prior comments, particularly as they relate to proposed sections 404 and 405.	<p>No change has been made in response to this comment.</p> <p>Refer to the DOJ responses to comments 9.1, 9.2, 9.3, and 9.4 for more detailed explanations about how the regulations were revised in response to the commenter’s original comments or why revision was not appropriate.</p>