

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 15, 2013

SENATE BILL

No. 530

Introduced by Senator Wright

February 21, 2013

An act to amend *Sections 8712, 8811, and 8908 of the Family Code, to amend Section 432.7 of the Labor Code, and to amend Section 11105 of, and to add Section 4852.22 to, the Penal Code*, relating to criminal offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 530, as amended, Wright. Criminal offenders: rehabilitation.

Existing law imposes criminal record and fingerprint check requirements for prospective adoptive parents, as specified. Existing law authorizes the State Department of Social Services or a licensed adoption agency to secure the applicant's full criminal record, if any.

This bill would exempt from those provisions any convictions for which relief, as specified, has been granted.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or posttrial diversion program, except as specified. Existing law makes it a crime to intentionally violate these provisions.

This bill would additionally prohibit an employer, as specified, from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a conviction that has been judicially dismissed, as provided, unless the employer is required by law to obtain that information, the applicant would be required to possess or use a firearm in the course of his or her employment, an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation, or if the employer is prohibited by law from hiring an applicant who has been convicted of a crime. Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

Existing law authorizes an individual convicted of a felony or convicted of a misdemeanor violation of a sex offense, as specified, to file a petition for a certificate of rehabilitation and a pardon provided that certain conditions have been satisfied. Existing law authorizes, after the minimum period of rehabilitation has expired, an individual, as specified, to file a petition for ascertainment and declaration of rehabilitation. Existing law authorizes a court to grant an order known as a certificate of rehabilitation and recommend that the Governor grant a full pardon to certain individuals.

This bill would authorize a trial court hearing an application for a certificate of rehabilitation before the applicable period of rehabilitation has elapsed to grant the application if the court, in its discretion, believes relief serves the interests of justice.

Existing law requires the Department of Justice to maintain state summary criminal history information, including the identification and criminal history of any person. Existing law requires the department to disseminate this information in response to a request from certain authorized agencies, organizations, or individuals that need the information to fulfill employment, certification, or licensing duties, such as the employment of peace officers or the licensing of community care facilities.

This bill would exempt from that dissemination requirement any convictions for which relief, as specified, has been granted.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8712 of the Family Code is amended to
2 read:

3 8712. (a) The department, county adoption agency, or licensed
4 adoption agency shall require each person filing an application for
5 adoption to be fingerprinted and shall secure from an appropriate
6 law enforcement agency any criminal record of that person to
7 determine whether the person has ever been convicted of a crime
8 other than a minor traffic violation. The department, county
9 adoption agency, or licensed adoption agency may also secure the
10 person's full criminal record, if any, *with the exception of a*
11 *conviction for which that person has been granted relief pursuant*
12 *to Section 1203.4 of the Penal Code.* Any federal-level criminal
13 offender record requests to the Department of Justice shall be
14 submitted with fingerprint images and related information required
15 by the Department of Justice for the purposes of obtaining
16 information as to the existence and content of a record of an
17 out-of-state or federal conviction or arrest of a person or
18 information regarding any out-of-state or federal crimes or arrests
19 for which the Department of Justice establishes that the person is
20 free on bail, or on his or her own recognizance pending trial or
21 appeal. The Department of Justice shall forward to the Federal
22 Bureau of Investigation any requests for federal summary criminal
23 history information received pursuant to this section. The
24 Department of Justice shall review the information returned from
25 the Federal Bureau of Investigation and shall compile and
26 disseminate a response to the department, county adoption agency,
27 or licensed adoption agency.

28 (b) Notwithstanding subdivision (c), the criminal record, if any,
29 shall be taken into consideration when evaluating the prospective
30 adoptive parent, and an assessment of the effects of any criminal
31 history on the ability of the prospective adoptive parent to provide
32 adequate and proper care and guidance to the child shall be
33 included in the report to the court.

1 (c) (1) Under no circumstances shall the department, county
2 adoption agency, or licensed adoption agency give final approval
3 for an adoptive placement in any home where the prospective
4 adoptive parent or any adult living in the prospective adoptive
5 home has either of the following:

6 (A) A felony conviction for child abuse or neglect, spousal
7 abuse, crimes against a child, including child pornography, or for
8 a crime involving violence, including rape, sexual assault, or
9 homicide, but not including other physical assault and battery. For
10 purposes of this subdivision, crimes involving violence means
11 those violent crimes contained in clause (i) of subparagraph (A),
12 and subparagraph (B), of paragraph (1) of subdivision (g) of
13 Section 1522 of the Health and Safety Code.

14 (B) A felony conviction that occurred within the last five years
15 for physical assault, battery, or a drug- or alcohol-related offense.

16 (2) This subdivision shall become operative on October 1, 2008,
17 and shall remain operative only to the extent that compliance with
18 its provisions is required by federal law as a condition of receiving
19 funding under Title IV-E of the federal Social Security Act (42
20 U.S.C. Sec. 670 and following).

21 (d) Any fee charged by a law enforcement agency for
22 fingerprinting or for checking or obtaining the criminal record of
23 the applicant shall be paid by the applicant. The department, county
24 adoption agency, or licensed adoption agency may defer, waive,
25 or reduce the fee when its payment would cause economic hardship
26 to prospective adoptive parents detrimental to the welfare of the
27 adopted child, when the child has been in the foster care of the
28 prospective adoptive parents for at least one year, or if necessary
29 for the placement of a special-needs child.

30 *SEC. 2. Section 8811 of the Family Code is amended to read:*

31 8811. (a) The department or delegated county adoption agency
32 shall require each person filing an adoption petition to be
33 fingerprinted and shall secure from an appropriate law enforcement
34 agency any criminal record of that person to determine whether
35 the person has ever been convicted of a crime other than a minor
36 traffic violation. The department or delegated county adoption
37 agency may also secure the person's full criminal record, if any,
38 *with the exception of a conviction for which that person has been*
39 *granted relief pursuant to Section 1203.4 of the Penal Code. Any*
40 federal-level criminal offender record requests to the Department

1 of Justice shall be submitted with fingerprint images and related
2 information required by the Department of Justice for the purposes
3 of obtaining information as to the existence and content of a record
4 of an out-of-state or federal conviction or arrest of a person or
5 information regarding any out-of-state or federal crimes or arrests
6 for which the Department of Justice establishes that the person is
7 free on bail, or on his or her own recognizance pending trial or
8 appeal. The Department of Justice shall forward to the Federal
9 Bureau of Investigation any requests for federal summary criminal
10 history information received pursuant to this section. The
11 Department of Justice shall review the information returned from
12 the Federal Bureau of Investigation and shall compile and
13 disseminate a response to the department or delegated county
14 adoption agency.

15 (b) Notwithstanding subdivision (c), the criminal record, if any,
16 shall be taken into consideration when evaluating the prospective
17 adoptive parent, and an assessment of the effects of any criminal
18 history on the ability of the prospective adoptive parent to provide
19 adequate and proper care and guidance to the child shall be
20 included in the report to the court.

21 (c) (1) Under no circumstances shall the department or a
22 delegated county adoption agency give final approval for an
23 adoptive placement in any home where the prospective adoptive
24 parent or any adult living in the prospective adoptive home has
25 either of the following:

26 (A) A felony conviction for child abuse or neglect, spousal
27 abuse, crimes against a child, including child pornography, or for
28 a crime involving violence, including rape, sexual assault, or
29 homicide, but not including other physical assault and battery. For
30 purposes of this subdivision, crimes involving violence means
31 those violent crimes contained in clause (i) of subparagraph (A),
32 and subparagraph (B), of paragraph (1) of subdivision (g) of
33 Section 1522 of the Health and Safety Code.

34 (B) A felony conviction that occurred within the last five years
35 for physical assault, battery, or a drug- or alcohol-related offense.

36 (2) This subdivision shall become operative on October 1, 2008,
37 and shall remain operative only to the extent that compliance with
38 its provisions is required by federal law as a condition of receiving
39 funding under Title IV-E of the federal Social Security Act (42
40 U.S.C. 670 and following).

1 (d) Any fee charged by a law enforcement agency for
2 fingerprinting or for checking or obtaining the criminal record of
3 the petitioner shall be paid by the petitioner. The department or
4 delegated county adoption agency may defer, waive, or reduce the
5 fee when its payment would cause economic hardship to the
6 prospective adoptive parents detrimental to the welfare of the
7 adopted child, when the child has been in the foster care of the
8 prospective adoptive parents for at least one year, or if necessary
9 for the placement of a special-needs child.

10 *SEC. 3. Section 8908 of the Family Code is amended to read:*

11 8908. (a) A licensed adoption agency shall require each person
12 filing an application for adoption to be fingerprinted and shall
13 secure from an appropriate law enforcement agency any criminal
14 record of that person to determine whether the person has ever
15 been convicted of a crime other than a minor traffic violation. The
16 licensed adoption agency may also secure the person's full criminal
17 record, if any, *with the exception of a conviction for which that*
18 *person has been granted relief pursuant to Section 1203.4 of the*
19 *Penal Code*. Any federal-level criminal offender record requests
20 to the Department of Justice shall be submitted with fingerprint
21 images and related information required by the Department of
22 Justice for the purposes of obtaining information as to the existence
23 and content of a record of an out-of-state or federal conviction or
24 arrest of a person or information regarding any out-of-state or
25 federal crimes or arrests for which the Department of Justice
26 establishes that the person is free on bail, or on his or her own
27 recognizance pending trial or appeal. The Department of Justice
28 shall forward to the Federal Bureau of Investigation any requests
29 for federal summary criminal history information received pursuant
30 to this section. The Department of Justice shall review the
31 information returned from the Federal Bureau of Investigation and
32 shall compile and disseminate a fitness determination to the
33 licensed adoption agency.

34 (b) Notwithstanding subdivision (c), the criminal record, if any,
35 shall be taken into consideration when evaluating the prospective
36 adoptive parent, and an assessment of the effects of any criminal
37 history on the ability of the prospective adoptive parent to provide
38 adequate and proper care and guidance to the child shall be
39 included in the report to the court.

1 (c) (1) Under no circumstances shall a licensed adoption agency
2 give final approval for an adoptive placement in any home where
3 the prospective adoptive parent or any adult living in the
4 prospective adoptive home, has a felony conviction for either of
5 the following:

6 (A) Any felony conviction for child abuse or neglect, spousal
7 abuse, crimes against a child, including child pornography, or for
8 a crime involving violence, including rape, sexual assault, or
9 homicide, but not including other physical assault and battery. For
10 purposes of this subdivision, crimes involving violence means
11 those violent crimes contained in clause (i) of subparagraph (A),
12 and subparagraph (B), of paragraph (1) of subdivision (g) of
13 Section 1522 of the Health and Safety Code.

14 (B) A felony conviction that occurred within the last five years
15 for physical assault, battery, or a drug- or alcohol-related offense.

16 (2) This subdivision shall become operative on October 1, 2008,
17 and shall remain operative only to the extent that compliance with
18 its provisions is required by federal law as a condition of receiving
19 funding under Title IV-E of the federal Social Security Act (42
20 U.S.C. 670 and following).

21 (d) Any fee charged by a law enforcement agency for
22 fingerprinting or for checking or obtaining the criminal record of
23 the applicant shall be paid by the applicant. The licensed adoption
24 agency may defer, waive, or reduce the fee when its payment would
25 cause economic hardship to the prospective adoptive parents
26 detrimental to the welfare of the adopted child.

27 ~~SECTION 4.~~

28 *SEC. 4.* Section 432.7 of the Labor Code is amended to read:

29 432.7. (a) No employer, whether a public agency or private
30 individual or corporation, shall ask an applicant for employment
31 to disclose, through any written form or verbally, information
32 concerning an arrest or detention that did not result in conviction,
33 or information concerning a referral to, and participation in, any
34 pretrial or posttrial diversion program, or concerning a conviction
35 that has been judicially dismissed pursuant to Section 1203.4 of
36 the Penal Code, nor shall any employer seek from any source
37 whatsoever, or utilize, as a factor in determining any condition of
38 employment including hiring, promotion, termination, or any
39 apprenticeship training program or any other training program
40 leading to employment, any record of arrest or detention that did

1 not result in conviction, or any record regarding a referral to, and
2 participation in, any pretrial or posttrial diversion program, or
3 concerning a conviction that has been judicially dismissed pursuant
4 to Section 1203.4 of the Penal Code. As used in this section, a
5 conviction shall include a plea, verdict, or finding of guilt
6 regardless of whether sentence is imposed by the court. Nothing
7 in this section shall prevent an employer from asking an employee
8 or applicant for employment about an arrest for which the employee
9 or applicant is out on bail or on his or her own recognizance
10 pending trial.

11 (b) Nothing in this section shall prohibit the disclosure of the
12 information authorized for release under Sections 13203 and 13300
13 of the Penal Code, to a government agency employing a peace
14 officer. However, the employer shall not determine any condition
15 of employment other than paid administrative leave based solely
16 on an arrest report. The information contained in an arrest report
17 may be used as the starting point for an independent, internal
18 investigation of a peace officer in accordance with Chapter 9.7
19 (commencing with Section 3300) of Division 4 of Title 1 of the
20 Government Code.

21 (c) In any case where a person violates this section, or Article
22 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part
23 4 of the Penal Code, the applicant may bring an action to recover
24 from that person actual damages or two hundred dollars (\$200),
25 whichever is greater, plus costs, and reasonable attorney's fees.
26 An intentional violation of this section shall entitle the applicant
27 to treble actual damages, or five hundred dollars (\$500), whichever
28 is greater, plus costs, and reasonable attorney's fees. An intentional
29 violation of this section is a misdemeanor punishable by a fine not
30 to exceed five hundred dollars (\$500).

31 (d) The remedies under this section shall be in addition to and
32 not in derogation of all other rights and remedies that an applicant
33 may have under any other law.

34 (e) Persons seeking employment or persons already employed
35 as peace officers or persons seeking employment for positions in
36 the Department of Justice or other criminal justice agencies as
37 defined in Section 13101 of the Penal Code are not covered by
38 this section.

1 (f) Nothing in this section shall prohibit an employer at a health
2 facility, as defined in Section 1250 of the Health and Safety Code,
3 from asking an applicant for employment either of the following:

4 (1) With regard to an applicant for a position with regular access
5 to patients, to disclose an arrest under any section specified in
6 Section 290 of the Penal Code.

7 (2) With regard to an applicant for a position with access to
8 drugs and medication, to disclose an arrest under any section
9 specified in Section 11590 of the Health and Safety Code.

10 (g) (1) No peace officer or employee of a law enforcement
11 agency with access to criminal offender record information
12 maintained by a local law enforcement criminal justice agency
13 shall knowingly disclose, with intent to affect a person's
14 employment, any information contained therein pertaining to an
15 arrest or detention or proceeding that did not result in a conviction,
16 including information pertaining to a referral to, and participation
17 in, any pretrial or posttrial diversion program, to any person not
18 authorized by law to receive that information.

19 (2) No other person authorized by law to receive criminal
20 offender record information maintained by a local law enforcement
21 criminal justice agency shall knowingly disclose any information
22 received therefrom pertaining to an arrest or detention or
23 proceeding that did not result in a conviction, including information
24 pertaining to a referral to, and participation in, any pretrial or
25 posttrial diversion program, to any person not authorized by law
26 to receive that information.

27 (3) No person, except those specifically referred to in Section
28 1070 of the Evidence Code, who knowing he or she is not
29 authorized by law to receive or possess criminal justice records
30 information maintained by a local law enforcement criminal justice
31 agency, pertaining to an arrest or other proceeding that did not
32 result in a conviction, including information pertaining to a referral
33 to, and participation in, any pretrial or posttrial diversion program,
34 shall receive or possess that information.

35 (h) "A person authorized by law to receive that information,"
36 for purposes of this section, means any person or public agency
37 authorized by a court, statute, or decisional law to receive
38 information contained in criminal offender records maintained by
39 a local law enforcement criminal justice agency, and includes, but
40 is not limited to, those persons set forth in Section 11105 of the

1 Penal Code, and any person employed by a law enforcement
2 criminal justice agency who is required by that employment to
3 receive, analyze, or process criminal offender record information.

4 (i) Nothing in this section shall require the Department of Justice
5 to remove entries relating to an arrest or detention not resulting in
6 conviction from summary criminal history records forwarded to
7 an employer pursuant to law.

8 (j) As used in this section, “pretrial or posttrial diversion
9 program” means any program under Chapter 2.5 (commencing
10 with Section 1000) or Chapter 2.7 (commencing with Section
11 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
12 13352.5 of the Vehicle Code, or any other program expressly
13 authorized and described by statute as a diversion program.

14 (k) (1) Subdivision (a) shall not apply to any city, city and
15 county, county, or district, or any officer or official thereof, in
16 screening a prospective concessionaire, or the affiliates and
17 associates of a prospective concessionaire for purposes of
18 consenting to, or approving of, the prospective concessionaire’s
19 application for, or acquisition of, any beneficial interest in a
20 concession, lease, or other property interest.

21 (2) For purposes of this subdivision the following terms have
22 the following meanings:

23 (A) “Screening” means a written request for criminal history
24 information made to a local law enforcement agency.

25 (B) “Prospective concessionaire” means any individual, general
26 or limited partnership, corporation, trust, association, or other
27 entity that is applying for, or seeking to obtain, a public agency’s
28 consent to, or approval of, the acquisition by that individual or
29 entity of any beneficial ownership interest in any public agency’s
30 concession, lease, or other property right whether directly or
31 indirectly held. However, “prospective concessionaire” does not
32 include any of the following:

33 (i) A lender acquiring an interest solely as security for a bona
34 fide loan made in the ordinary course of the lender’s business and
35 not made for the purpose of acquisition.

36 (ii) A lender upon foreclosure or assignment in lieu of
37 foreclosure of the lender’s security.

38 (C) “Affiliate” means any individual or entity that controls, or
39 is controlled by, the prospective concessionaire, or who is under
40 common control with the prospective concessionaire.

1 (D) “Associate” means any individual or entity that shares a
2 common business purpose with the prospective concessionaire
3 with respect to the beneficial ownership interest that is subject to
4 the consent or approval of the city, county, city and county, or
5 district.

6 (E) “Control” means the possession, direct or indirect, of the
7 power to direct, or cause the direction of, the management or
8 policies of the controlled individual or entity.

9 (I) (1) Nothing in subdivision (a) shall prohibit a public agency,
10 or any officer or official thereof, from denying consent to, or
11 approval of, a prospective concessionaire’s application for, or
12 acquisition of, any beneficial interest in a concession, lease, or
13 other property interest based on the criminal history information
14 of the prospective concessionaire or the affiliates or associates of
15 the prospective concessionaire that show any criminal conviction
16 for offenses involving moral turpitude. Criminal history
17 information for purposes of this subdivision includes any criminal
18 history information obtained pursuant to Section 11105 or 13300
19 of the Penal Code.

20 (2) In considering criminal history information, a public agency
21 shall consider the crime for which the prospective concessionaire
22 or the affiliates or associates of the prospective concessionaire was
23 convicted only if that crime relates to the specific business that is
24 proposed to be conducted by the prospective concessionaire.

25 (3) Any prospective concessionaire whose application for
26 consent or approval to acquire a beneficial interest in a concession,
27 lease, or other property interest is denied based on criminal history
28 information shall be provided a written statement of the reason for
29 the denial.

30 (4) (A) If the prospective concessionaire submits a written
31 request to the public agency within 10 days of the date of the notice
32 of denial, the public agency shall review its decision with regard
33 to any corrected record or other evidence presented by the
34 prospective concessionaire as to the accuracy or incompleteness
35 of the criminal history information utilized by the public agency
36 in making its original decision.

37 (B) The prospective concessionaire shall submit the copy or the
38 corrected record of any other evidence to the public agency within
39 90 days of a request for review. The public agency shall render its

1 decision within 20 days of the submission of evidence by the
2 prospective concessionaire.

3 (m) Subdivision (a) does not prohibit an employer from asking
4 an applicant about a criminal conviction of, seeking from any
5 source information regarding a criminal conviction of, utilizing as
6 a factor in determining any condition of employment of, or entry
7 into a pretrial diversion or similar program by, the applicant if,
8 pursuant to Section 1829 of Title 12 of the United States Code or
9 any other state or federal law, any of the following apply:

10 (1) The employer is required by law to obtain information
11 regarding a conviction of an applicant.

12 (2) The applicant would be required to possess or use a firearm
13 in the course of his or her employment.

14 (3) An individual who has been convicted of a crime is
15 prohibited by law from holding the position sought by the
16 applicant, regardless of whether that conviction has been expunged,
17 judicially ordered sealed, statutorily eradicated, or judicially
18 dismissed following probation.

19 (4) The employer is prohibited by law from hiring an applicant
20 who has been convicted of a crime.

21 *SEC. 5. Section 4852.22 is added to the Penal Code, to read:*

22 *4852.22. Except in a case requiring registration pursuant to*
23 *Section 290, a trial court hearing an application for a certificate*
24 *of rehabilitation before the applicable period of rehabilitation has*
25 *elapsed may grant the application if the court, in its discretion,*
26 *believes relief serves the interests of justice.*

27 *SEC. 6. Section 11105 of the Penal Code is amended to read:*

28 11105. (a) (1) The Department of Justice shall maintain state
29 summary criminal history information.

30 (2) As used in this section:

31 (A) “State summary criminal history information” means the
32 master record of information compiled by the Attorney General
33 pertaining to the identification and criminal history of any person,
34 such as name, date of birth, physical description, fingerprints,
35 photographs, dates of arrests, arresting agencies and booking
36 numbers, charges, dispositions, and similar data about the person.

37 (B) “State summary criminal history information” does not refer
38 to records and data compiled by criminal justice agencies other
39 than the Attorney General, nor does it refer to records of complaints
40 to or investigations conducted by, or records of intelligence

1 information or security procedures of, the office of the Attorney
2 General and the Department of Justice.

3 (b) The Attorney General shall furnish state summary criminal
4 history information to any of the following, if needed in the course
5 of their duties, provided that when information is furnished to
6 assist an agency, officer, or official of state or local government,
7 a public utility, or any other entity, in fulfilling employment,
8 certification, or licensing duties, Chapter 1321 of the Statutes of
9 1974 and Section 432.7 of the Labor Code shall apply:

10 (1) The courts of the state.

11 (2) Peace officers of the state, as defined in Section 830.1,
12 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
13 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision
14 (a) of Section 830.31.

15 (3) District attorneys of the state.

16 (4) Prosecuting city attorneys of any city within the state.

17 (5) City attorneys pursuing civil gang injunctions pursuant to
18 Section 186.22a, or drug abatement actions pursuant to Section
19 3479 or 3480 of the Civil Code, or Section 11571 of the Health
20 and Safety Code.

21 (6) Probation officers of the state.

22 (7) Parole officers of the state.

23 (8) A public defender or attorney of record when representing
24 a person in proceedings upon a petition for a certificate of
25 rehabilitation and pardon pursuant to Section 4852.08.

26 (9) A public defender or attorney of record when representing
27 a person in a criminal case, or a parole, mandatory supervision
28 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
29 postrelease community supervision revocation or revocation
30 extension proceeding, and if authorized access by statutory or
31 decisional law.

32 (10) Any agency, officer, or official of the state if the criminal
33 history information is required to implement a statute or regulation
34 that expressly refers to specific criminal conduct applicable to the
35 subject person of the state summary criminal history information,
36 and contains requirements or exclusions, or both, expressly based
37 upon that specified criminal conduct. The agency, officer, or
38 official of the state authorized by this paragraph to receive state
39 summary criminal history information may also transmit fingerprint

1 images and related information to the Department of Justice to be
2 transmitted to the Federal Bureau of Investigation.

3 (11) Any city or county, city and county, district, or any officer
4 or official thereof if access is needed in order to assist that agency,
5 officer, or official in fulfilling employment, certification, or
6 licensing duties, and if the access is specifically authorized by the
7 city council, board of supervisors, or governing board of the city,
8 county, or district if the criminal history information is required
9 to implement a statute, ordinance, or regulation that expressly
10 refers to specific criminal conduct applicable to the subject person
11 of the state summary criminal history information, and contains
12 requirements or exclusions, or both, expressly based upon that
13 specified criminal conduct. The city or county, city and county,
14 district, or the officer or official thereof authorized by this
15 paragraph may also transmit fingerprint images and related
16 information to the Department of Justice to be transmitted to the
17 Federal Bureau of Investigation.

18 (12) The subject of the state summary criminal history
19 information under procedures established under Article 5
20 (commencing with Section 11120).

21 (13) Any person or entity when access is expressly authorized
22 by statute if the criminal history information is required to
23 implement a statute or regulation that expressly refers to specific
24 criminal conduct applicable to the subject person of the state
25 summary criminal history information, and contains requirements
26 or exclusions, or both, expressly based upon that specified criminal
27 conduct.

28 (14) Health officers of a city, county, city and county, or district
29 when in the performance of their official duties enforcing Section
30 120175 of the Health and Safety Code.

31 (15) Any managing or supervising correctional officer of a
32 county jail or other county correctional facility.

33 (16) Any humane society, or society for the prevention of cruelty
34 to animals, for the specific purpose of complying with Section
35 14502 of the Corporations Code for the appointment of humane
36 officers.

37 (17) Local child support agencies established by Section 17304
38 of the Family Code. When a local child support agency closes a
39 support enforcement case containing summary criminal history
40 information, the agency shall delete or purge from the file and

1 destroy any documents or information concerning or arising from
2 offenses for or of which the parent has been arrested, charged, or
3 convicted, other than for offenses related to the parent's having
4 failed to provide support for minor children, consistent with the
5 requirements of Section 17531 of the Family Code.

6 (18) County child welfare agency personnel who have been
7 delegated the authority of county probation officers to access state
8 summary criminal history information pursuant to Section 272 of
9 the Welfare and Institutions Code for the purposes specified in
10 Section 16504.5 of the Welfare and Institutions Code. Information
11 from criminal history records provided pursuant to this subdivision
12 shall not be used for any purposes other than those specified in
13 this section and Section 16504.5 of the Welfare and Institutions
14 Code. When an agency obtains records obtained both on the basis
15 of name checks and fingerprint checks, final placement decisions
16 shall be based only on the records obtained pursuant to the
17 fingerprint check.

18 (19) The court of a tribe, or court of a consortium of tribes, that
19 has entered into an agreement with the state pursuant to Section
20 10553.1 of the Welfare and Institutions Code. This information
21 may be used only for the purposes specified in Section 16504.5
22 of the Welfare and Institutions Code and for tribal approval or
23 tribal licensing of foster care or adoptive homes. Article 6
24 (commencing with Section 11140) shall apply to officers, members,
25 and employees of a tribal court receiving criminal record offender
26 information pursuant to this section.

27 (20) Child welfare agency personnel of a tribe or consortium
28 of tribes that has entered into an agreement with the state pursuant
29 to Section 10553.1 of the Welfare and Institutions Code and to
30 whom the state has delegated duties under paragraph (2) of
31 subdivision (a) of Section 272 of the Welfare and Institutions Code.
32 The purposes for use of the information shall be for the purposes
33 specified in Section 16504.5 of the Welfare and Institutions Code
34 and for tribal approval or tribal licensing of foster care or adoptive
35 homes. When an agency obtains records on the basis of name
36 checks and fingerprint checks, final placement decisions shall be
37 based only on the records obtained pursuant to the fingerprint
38 check. Article 6 (commencing with Section 11140) shall apply to
39 child welfare agency personnel receiving criminal record offender
40 information pursuant to this section.

1 (21) An officer providing conservatorship investigations
2 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
3 Institutions Code.

4 (22) A court investigator providing investigations or reviews
5 in conservatorships pursuant to Section 1826, 1850, 1851, or
6 2250.6 of the Probate Code.

7 (23) A person authorized to conduct a guardianship investigation
8 pursuant to Section 1513 of the Probate Code.

9 (24) A humane officer pursuant to Section 14502 of the
10 Corporations Code for the purposes of performing his or her duties.

11 (c) The Attorney General may furnish state summary criminal
12 history information and, when specifically authorized by this
13 subdivision, federal level criminal history information upon a
14 showing of a compelling need to any of the following, provided
15 that when information is furnished to assist an agency, officer, or
16 official of state or local government, a public utility, or any other
17 entity in fulfilling employment, certification, or licensing duties,
18 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
19 Labor Code shall apply:

20 (1) Any public utility, as defined in Section 216 of the Public
21 Utilities Code, that operates a nuclear energy facility when access
22 is needed in order to assist in employing persons to work at the
23 facility, provided that, if the Attorney General supplies the data,
24 he or she shall furnish a copy of the data to the person to whom
25 the data relates.

26 (2) To a peace officer of the state other than those included in
27 subdivision (b).

28 (3) To an illegal dumping enforcement officer as defined in
29 subdivision (j) of Section 830.7.

30 (4) To a peace officer of another country.

31 (5) To public officers, other than peace officers, of the United
32 States, other states, or possessions or territories of the United
33 States, provided that access to records similar to state summary
34 criminal history information is expressly authorized by a statute
35 of the United States, other states, or possessions or territories of
36 the United States if the information is needed for the performance
37 of their official duties.

38 (6) To any person when disclosure is requested by a probation,
39 parole, or peace officer with the consent of the subject of the state

1 summary criminal history information and for purposes of
2 furthering the rehabilitation of the subject.

3 (7) The courts of the United States, other states, or territories
4 or possessions of the United States.

5 (8) Peace officers of the United States, other states, or territories
6 or possessions of the United States.

7 (9) To any individual who is the subject of the record requested
8 if needed in conjunction with an application to enter the United
9 States or any foreign nation.

10 (10) (A) (i) Any public utility, as defined in Section 216 of the
11 Public Utilities Code, or any cable corporation as defined in
12 subparagraph (B), if receipt of criminal history information is
13 needed in order to assist in employing current or prospective
14 employees, contract employees, or subcontract employees who,
15 in the course of their employment may be seeking entrance to
16 private residences or adjacent grounds. The information provided
17 shall be limited to the record of convictions and any arrest for
18 which the person is released on bail or on his or her own
19 recognizance pending trial.

20 (ii) If the Attorney General supplies the data pursuant to this
21 paragraph, the Attorney General shall furnish a copy of the data
22 to the current or prospective employee to whom the data relates.

23 (iii) Any information obtained from the state summary criminal
24 history is confidential and the receiving public utility or cable
25 corporation shall not disclose its contents, other than for the
26 purpose for which it was acquired. The state summary criminal
27 history information in the possession of the public utility or cable
28 corporation and all copies made from it shall be destroyed not
29 more than 30 days after employment or promotion or transfer is
30 denied or granted, except for those cases where a current or
31 prospective employee is out on bail or on his or her own
32 recognizance pending trial, in which case the state summary
33 criminal history information and all copies shall be destroyed not
34 more than 30 days after the case is resolved.

35 (iv) A violation of this paragraph is a misdemeanor, and shall
36 give the current or prospective employee who is injured by the
37 violation a cause of action against the public utility or cable
38 corporation to recover damages proximately caused by the
39 violations. Any public utility's or cable corporation's request for
40 state summary criminal history information for purposes of

1 employing current or prospective employees who may be seeking
2 entrance to private residences or adjacent grounds in the course
3 of their employment shall be deemed a “compelling need” as
4 required to be shown in this subdivision.

5 (v) Nothing in this section shall be construed as imposing any
6 duty upon public utilities or cable corporations to request state
7 summary criminal history information on any current or prospective
8 employees.

9 (B) For purposes of this paragraph, “cable corporation” means
10 any corporation or firm that transmits or provides television,
11 computer, or telephone services by cable, digital, fiber optic,
12 satellite, or comparable technology to subscribers for a fee.

13 (C) Requests for federal level criminal history information
14 received by the Department of Justice from entities authorized
15 pursuant to subparagraph (A) shall be forwarded to the Federal
16 Bureau of Investigation by the Department of Justice. Federal level
17 criminal history information received or compiled by the
18 Department of Justice may then be disseminated to the entities
19 referenced in subparagraph (A), as authorized by law.

20 (D) (i) Authority for a cable corporation to request state or
21 federal level criminal history information under this paragraph
22 shall commence July 1, 2005.

23 (ii) Authority for a public utility to request federal level criminal
24 history information under this paragraph shall commence July 1,
25 2005.

26 (11) To any campus of the California State University or the
27 University of California, or any four year college or university
28 accredited by a regional accreditation organization approved by
29 the United States Department of Education, if needed in
30 conjunction with an application for admission by a convicted felon
31 to any special education program for convicted felons, including,
32 but not limited to, university alternatives and halfway houses. Only
33 conviction information shall be furnished. The college or university
34 may require the convicted felon to be fingerprinted, and any inquiry
35 to the department under this section shall include the convicted
36 felon’s fingerprints and any other information specified by the
37 department.

38 (12) To any foreign government, if requested by the individual
39 who is the subject of the record requested, if needed in conjunction
40 with the individual’s application to adopt a minor child who is a

1 citizen of that foreign nation. Requests for information pursuant
2 to this paragraph shall be in accordance with the process described
3 in Sections 11122 to 11124, inclusive. The response shall be
4 provided to the foreign government or its designee and to the
5 individual who requested the information.

6 (d) Whenever an authorized request for state summary criminal
7 history information pertains to a person whose fingerprints are on
8 file with the Department of Justice and the department has no
9 criminal history of that person, and the information is to be used
10 for employment, licensing, or certification purposes, the fingerprint
11 card accompanying the request for information, if any, may be
12 stamped “no criminal record” and returned to the person or entity
13 making the request.

14 (e) Whenever state summary criminal history information is
15 furnished as the result of an application and is to be used for
16 employment, licensing, or certification purposes, the Department
17 of Justice may charge the person or entity making the request a
18 fee that it determines to be sufficient to reimburse the department
19 for the cost of furnishing the information. In addition, the
20 Department of Justice may add a surcharge to the fee to fund
21 maintenance and improvements to the systems from which the
22 information is obtained. Notwithstanding any other law, any person
23 or entity required to pay a fee to the department for information
24 received under this section may charge the applicant a fee sufficient
25 to reimburse the person or entity for this expense. All moneys
26 received by the department pursuant to this section, Sections
27 11105.3 and 26190, and former Section 13588 of the Education
28 Code shall be deposited in a special account in the General Fund
29 to be available for expenditure by the department to offset costs
30 incurred pursuant to those sections and for maintenance and
31 improvements to the systems from which the information is
32 obtained upon appropriation by the Legislature.

33 (f) Whenever there is a conflict, the processing of criminal
34 fingerprints and fingerprints of applicants for security guard or
35 alarm agent registrations or firearms qualification permits
36 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
37 of the Business and Professions Code shall take priority over the
38 processing of other applicant fingerprints.

1 (g) It is not a violation of this section to disseminate statistical
2 or research information obtained from a record, provided that the
3 identity of the subject of the record is not disclosed.

4 (h) It is not a violation of this section to include information
5 obtained from a record in (1) a transcript or record of a judicial or
6 administrative proceeding or (2) any other public record if the
7 inclusion of the information in the public record is authorized by
8 a court, statute, or decisional law.

9 (i) Notwithstanding any other law, the Department of Justice
10 or any state or local law enforcement agency may require the
11 submission of fingerprints for the purpose of conducting summary
12 criminal history information checks that are authorized by law.

13 (j) The state summary criminal history information shall include
14 any finding of mental incompetence pursuant to Chapter 6
15 (commencing with Section 1367) of Title 10 of Part 2 arising out
16 of a complaint charging a felony offense specified in Section 290.

17 (k) (1) This subdivision shall apply whenever state or federal
18 summary criminal history information is furnished by the
19 Department of Justice as the result of an application by an
20 authorized agency or organization and the information is to be
21 used for peace officer employment or certification purposes. As
22 used in this subdivision, a peace officer is defined in Chapter 4.5
23 (commencing with Section 830) of Title 3 of Part 2.

24 (2) Notwithstanding any other provision of law, whenever state
25 summary criminal history information is initially furnished
26 pursuant to paragraph (1), the Department of Justice shall
27 disseminate the following information:

28 (A) Every conviction rendered against the applicant.

29 (B) Every arrest for an offense for which the applicant is
30 presently awaiting trial, whether the applicant is incarcerated or
31 has been released on bail or on his or her own recognizance
32 pending trial.

33 (C) Every arrest or detention, except for an arrest or detention
34 resulting in an exoneration, provided however that where the
35 records of the Department of Justice do not contain a disposition
36 for the arrest, the Department of Justice first makes a genuine effort
37 to determine the disposition of the arrest.

38 (D) Every successful diversion.

39 (E) Every date and agency name associated with all retained
40 peace officer or nonsworn law enforcement agency employee

1 preemployment criminal offender record information search
2 requests.

3 (l) (1) This subdivision shall apply whenever state or federal
4 summary criminal history information is furnished by the
5 Department of Justice as the result of an application by a criminal
6 justice agency or organization as defined in Section 13101, and
7 the information is to be used for criminal justice employment,
8 licensing, or certification purposes.

9 (2) Notwithstanding any other provision of law, whenever state
10 summary criminal history information is initially furnished
11 pursuant to paragraph (1), the Department of Justice shall
12 disseminate the following information:

13 (A) Every conviction rendered against the applicant.

14 (B) Every arrest for an offense for which the applicant is
15 presently awaiting trial, whether the applicant is incarcerated or
16 has been released on bail or on his or her own recognizance
17 pending trial.

18 (C) Every arrest for an offense for which the records of the
19 Department of Justice do not contain a disposition or did not result
20 in a conviction, provided that the Department of Justice first makes
21 a genuine effort to determine the disposition of the arrest. However,
22 information concerning an arrest shall not be disclosed if the
23 records of the Department of Justice indicate or if the genuine
24 effort reveals that the subject was exonerated, successfully
25 completed a diversion or deferred entry of judgment program, or
26 the arrest was deemed a detention.

27 (D) Every date and agency name associated with all retained
28 peace officer or nonsworn law enforcement agency employee
29 preemployment criminal offender record information search
30 requests.

31 (m) (1) This subdivision shall apply whenever state or federal
32 summary criminal history information is furnished by the
33 Department of Justice as the result of an application by an
34 authorized agency or organization pursuant to Section 1522,
35 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
36 any statute that incorporates the criteria of any of those sections
37 or this subdivision by reference, and the information is to be used
38 for employment, licensing, or certification purposes.

39 (2) Notwithstanding any other provision of law, whenever state
40 summary criminal history information is initially furnished

1 pursuant to paragraph (1), the Department of Justice shall
2 disseminate the following information:

3 (A) Every conviction of an offense rendered against the
4 ~~applicant~~: *applicant, except a conviction for which the applicant*
5 *has been granted relief pursuant to Section 1203.4.*

6 (B) Every arrest for an offense for which the applicant is
7 presently awaiting trial, whether the applicant is incarcerated or
8 has been released on bail or on his or her own recognizance
9 pending trial.

10 (C) Every arrest for an offense for which the Department of
11 Social Services is required by paragraph (1) of subdivision (a) of
12 Section 1522 of the Health and Safety Code to determine if an
13 applicant has been arrested. However, if the records of the
14 Department of Justice do not contain a disposition for an arrest,
15 the Department of Justice shall first make a genuine effort to
16 determine the disposition of the arrest.

17 (3) Notwithstanding the requirements of the sections referenced
18 in paragraph (1) of this subdivision, the Department of Justice
19 shall not disseminate information about an arrest subsequently
20 deemed a detention or an arrest that resulted in either the successful
21 completion of a diversion program or exoneration.

22 (n) (1) This subdivision shall apply whenever state or federal
23 summary criminal history information, to be used for employment,
24 licensing, or certification purposes, is furnished by the Department
25 of Justice as the result of an application by an authorized agency,
26 organization, or individual pursuant to any of the following:

27 (A) Paragraph (9) of subdivision (c), when the information is
28 to be used by a cable corporation.

29 (B) Section 11105.3 or 11105.4.

30 (C) Section 15660 of the Welfare and Institutions Code.

31 (D) Any statute that incorporates the criteria of any of the
32 statutory provisions listed in subparagraph (A), (B), or (C), or of
33 this subdivision, by reference.

34 (2) With the exception of applications submitted by
35 transportation companies authorized pursuant to Section 11105.3,
36 and notwithstanding any other provision of law, whenever state
37 summary criminal history information is initially furnished
38 pursuant to paragraph (1), the Department of Justice shall
39 disseminate the following information:

1 (A) Every conviction rendered against the applicant for a
2 violation or attempted violation of any offense specified in
3 subdivision (a) of Section 15660 of the Welfare and Institutions
4 ~~Code~~. *Code, except a conviction for which the applicant has been*
5 *granted relief pursuant to Section 1203.4.* However, with the
6 exception of those offenses for which registration is required
7 pursuant to Section 290, the Department of Justice shall not
8 disseminate information pursuant to this subdivision unless the
9 conviction occurred within 10 years of the date of the agency's
10 request for information or the conviction is over 10 years old but
11 the subject of the request was incarcerated within 10 years of the
12 agency's request for information.

13 (B) Every arrest for a violation or attempted violation of an
14 offense specified in subdivision (a) of Section 15660 of the Welfare
15 and Institutions Code for which the applicant is presently awaiting
16 trial, whether the applicant is incarcerated or has been released on
17 bail or on his or her own recognizance pending trial.

18 (o) (1) This subdivision shall apply whenever state or federal
19 summary criminal history information is furnished by the
20 Department of Justice as the result of an application by an
21 authorized agency or organization pursuant to Section 379 or 550
22 of the Financial Code, or any statute that incorporates the criteria
23 of either of those sections or this subdivision by reference, and the
24 information is to be used for employment, licensing, or certification
25 purposes.

26 (2) Notwithstanding any other provision of law, whenever state
27 summary criminal history information is initially furnished
28 pursuant to paragraph (1), the Department of Justice shall
29 disseminate the following information:

30 (A) Every conviction rendered against the applicant for a
31 violation or attempted violation of any offense specified in Section
32 550 of the Financial ~~Code~~. *Code, except a conviction for which*
33 *the applicant has been granted relief pursuant to Section 1203.4.*

34 (B) Every arrest for a violation or attempted violation of an
35 offense specified in Section 550 of the Financial Code for which
36 the applicant is presently awaiting trial, whether the applicant is
37 incarcerated or has been released on bail or on his or her own
38 recognizance pending trial.

39 (p) (1) This subdivision shall apply whenever state or federal
40 criminal history information is furnished by the Department of

1 Justice as the result of an application by an agency, organization,
2 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
3 by a transportation company authorized pursuant to Section
4 11105.3, or any statute that incorporates the criteria of that section
5 or this subdivision by reference, and the information is to be used
6 for employment, licensing, or certification purposes.

7 (2) Notwithstanding any other provisions of law, whenever state
8 summary criminal history information is initially furnished
9 pursuant to paragraph (1), the Department of Justice shall
10 disseminate the following information:

11 (A) Every conviction rendered against the ~~applicant~~ *applicant*,
12 *except a conviction for which the applicant has been granted relief*
13 *pursuant to Section 1203.4.*

14 (B) Every arrest for an offense for which the applicant is
15 presently awaiting trial, whether the applicant is incarcerated or
16 has been released on bail or on his or her own recognizance
17 pending trial.

18 (q) All agencies, organizations, or individuals defined in
19 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
20 Department of Justice for subsequent notification pursuant to
21 Section 11105.2. This subdivision shall not supersede sections that
22 mandate an agency, organization, or individual to contract with
23 the Department of Justice for subsequent notification pursuant to
24 Section 11105.2.

25 (r) Nothing in this section shall be construed to mean that the
26 Department of Justice shall cease compliance with any other
27 statutory notification requirements.

28 (s) The provisions of Section 50.12 of Title 28 of the Code of
29 Federal Regulations are to be followed in processing federal
30 criminal history information.

31 (t) Whenever state or federal summary criminal history
32 information is furnished by the Department of Justice as the result
33 of an application by an authorized agency, organization, or
34 individual defined in subdivisions (k) to (p), inclusive, and the
35 information is to be used for employment, licensing, or certification
36 purposes, the authorized agency, organization, or individual shall
37 expeditiously furnish a copy of the information to the person to
38 whom the information relates if the information is a basis for an
39 adverse employment, licensing, or certification decision. When

1 furnished other than in person, the copy shall be delivered to the
2 last contact information provided by the applicant.

3 ~~SEC. 2.~~

4 *SEC. 7.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

O