

AMENDED IN ASSEMBLY JUNE 25, 2013

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~~, *dismissed or ordered sealed*, 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 (e) (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 ~~(e) (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 ~~SEC. 4.~~

28 ~~SECTION 1.~~ Section 432.7 of the Labor Code is amended to
29 read:

30 432.7. (a) No employer, whether a public agency or private
31 individual or corporation, shall ask an applicant for employment
32 to disclose, through any written form or verbally, information
33 concerning an arrest or detention that did not result in conviction,
34 or information concerning a referral to, and participation in, any
35 pretrial or posttrial diversion program, or concerning a conviction
36 that has been judicially dismissed *or ordered sealed* pursuant to
37 ~~Section 1203.4 law, including, but not limited to, Sections 1203.4,~~
38 ~~1203.4a, 1203.45, and 1210.1~~ of the Penal Code, nor shall any
39 employer seek from any source whatsoever, or utilize, as a factor
40 in determining any condition of employment including hiring,

1 promotion, termination, or any apprenticeship training program
2 or any other training program leading to employment, any record
3 of arrest or detention that did not result in conviction, or any record
4 regarding a referral to, and participation in, any pretrial or posttrial
5 diversion program, or concerning a conviction that has been
6 judicially dismissed *or ordered sealed* pursuant to ~~Section 1203.4~~
7 *law, including, but not limited to, Sections 1203.4, 1203.4a,*
8 *1203.45, and 1210.1* of the Penal Code. As used in this section, a
9 conviction shall include a plea, verdict, or finding of guilt
10 regardless of whether sentence is imposed by the court. Nothing
11 in this section shall prevent an employer from asking an employee
12 or applicant for employment about an arrest for which the employee
13 or applicant is out on bail or on his or her own recognizance
14 pending trial.

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

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

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

38 (e) Persons seeking employment or persons already employed
39 as peace officers or persons seeking employment for positions in
40 the Department of Justice or other criminal justice agencies as

1 defined in Section 13101 of the Penal Code are not covered by
2 this section.

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

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

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

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

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

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

37 (h) "A person authorized by law to receive that information,"
38 for purposes of this section, means any person or public agency
39 authorized by a court, statute, or decisional law to receive
40 information contained in criminal offender records maintained by

1 a local law enforcement criminal justice agency, and includes, but
2 is not limited to, those persons set forth in Section 11105 of the
3 Penal Code, and any person employed by a law enforcement
4 criminal justice agency who is required by that employment to
5 receive, analyze, or process criminal offender record information.

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

10 (j) As used in this section, “pretrial or posttrial diversion
11 program” means any program under Chapter 2.5 (commencing
12 with Section 1000) or Chapter 2.7 (commencing with Section
13 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
14 13352.5 of the Vehicle Code, or any other program expressly
15 authorized and described by statute as a diversion program.

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

23 (2) For purposes of this subdivision the following terms have
24 the following meanings:

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

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

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

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

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

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

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

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

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

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

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

1 (B) The prospective concessionaire shall submit the copy or the
2 corrected record of any other evidence to the public agency within
3 90 days of a request for review. The public agency shall render its
4 decision within 20 days of the submission of evidence by the
5 prospective concessionaire.

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

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

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

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

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

24 ~~SEC. 5.~~

25 *SEC. 2.* Section 4852.22 is added to the Penal Code, to read:
26 4852.22. Except in a case requiring registration pursuant to
27 Section 290, a trial court hearing an application for a certificate
28 of rehabilitation before the applicable period of rehabilitation has
29 elapsed may grant the application if the court, in its discretion,
30 believes relief serves the interests of justice.

31 ~~SEC. 6.~~

32 *SEC. 3.* Section 11105 of the Penal Code is amended to read:
33 11105. (a) (1) The Department of Justice shall maintain state
34 summary criminal history information.

35 (2) As used in this section:

36 (A) “State summary criminal history information” means the
37 master record of information compiled by the Attorney General
38 pertaining to the identification and criminal history of any person,
39 such as name, date of birth, physical description, fingerprints,

1 photographs, dates of arrests, arresting agencies and booking
2 numbers, charges, dispositions, and similar data about the person.

3 (B) “State summary criminal history information” does not refer
4 to records and data compiled by criminal justice agencies other
5 than the Attorney General, nor does it refer to records of complaints
6 to or investigations conducted by, or records of intelligence
7 information or security procedures of, the office of the Attorney
8 General and the Department of Justice.

9 (b) The Attorney General shall furnish state summary criminal
10 history information to any of the following, if needed in the course
11 of their duties, provided that when information is furnished to
12 assist an agency, officer, or official of state or local government,
13 a public utility, or any other entity, in fulfilling employment,
14 certification, or licensing duties, Chapter 1321 of the Statutes of
15 1974 and Section 432.7 of the Labor Code shall apply:

16 (1) The courts of the state.

17 (2) Peace officers of the state, as defined in Section 830.1,
18 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
19 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision
20 (a) of Section 830.31.

21 (3) District attorneys of the state.

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

23 (5) City attorneys pursuing civil gang injunctions pursuant to
24 Section 186.22a, or drug abatement actions pursuant to Section
25 3479 or 3480 of the Civil Code, or Section 11571 of the Health
26 and Safety Code.

27 (6) Probation officers of the state.

28 (7) Parole officers of the state.

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

32 (9) A public defender or attorney of record when representing
33 a person in a criminal case, or a parole, mandatory supervision
34 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
35 postrelease community supervision revocation or revocation
36 extension proceeding, and if authorized access by statutory or
37 decisional law.

38 (10) Any agency, officer, or official of the state if the criminal
39 history information is required to implement a statute or regulation
40 that expressly refers to specific criminal conduct applicable to the

1 subject person of the state summary criminal history information,
2 and contains requirements or exclusions, or both, expressly based
3 upon that specified criminal conduct. The agency, officer, or
4 official of the state authorized by this paragraph to receive state
5 summary criminal history information may also transmit fingerprint
6 images and related information to the Department of Justice to be
7 transmitted to the Federal Bureau of Investigation.

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

23 (12) The subject of the state summary criminal history
24 information under procedures established under Article 5
25 (commencing with Section 11120).

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

33 (14) Health officers of a city, county, city and county, or district
34 when in the performance of their official duties enforcing Section
35 120175 of the Health and Safety Code.

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

38 (16) Any humane society, or society for the prevention of cruelty
39 to animals, for the specific purpose of complying with Section

1 14502 of the Corporations Code for the appointment of humane
2 officers.

3 (17) Local child support agencies established by Section 17304
4 of the Family Code. When a local child support agency closes a
5 support enforcement case containing summary criminal history
6 information, the agency shall delete or purge from the file and
7 destroy any documents or information concerning or arising from
8 offenses for or of which the parent has been arrested, charged, or
9 convicted, other than for offenses related to the parent's having
10 failed to provide support for minor children, consistent with the
11 requirements of Section 17531 of the Family Code.

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

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

33 (20) Child welfare agency personnel of a tribe or consortium
34 of tribes that has entered into an agreement with the state pursuant
35 to Section 10553.1 of the Welfare and Institutions Code and to
36 whom the state has delegated duties under paragraph (2) of
37 subdivision (a) of Section 272 of the Welfare and Institutions Code.
38 The purposes for use of the information shall be for the purposes
39 specified in Section 16504.5 of the Welfare and Institutions Code
40 and for tribal approval or tribal licensing of foster care or adoptive

1 homes. When an agency obtains records on the basis of name
2 checks and fingerprint checks, final placement decisions shall be
3 based only on the records obtained pursuant to the fingerprint
4 check. Article 6 (commencing with Section 11140) shall apply to
5 child welfare agency personnel receiving criminal record offender
6 information pursuant to this section.

7 (21) An officer providing conservatorship investigations
8 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
9 Institutions Code.

10 (22) A court investigator providing investigations or reviews
11 in conservatorships pursuant to Section 1826, 1850, 1851, or
12 2250.6 of the Probate Code.

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

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

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

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

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

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

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

37 (5) To public officers, other than peace officers, of the United
38 States, other states, or possessions or territories of the United
39 States, provided that access to records similar to state summary
40 criminal history information is expressly authorized by a statute

1 of the United States, other states, or possessions or territories of
2 the United States if the information is needed for the performance
3 of their official duties.

4 (6) To any person when disclosure is requested by a probation,
5 parole, or peace officer with the consent of the subject of the state
6 summary criminal history information and for purposes of
7 furthering the rehabilitation of the subject.

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

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

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

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

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

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

1 (iv) A violation of this paragraph is a misdemeanor, and shall
2 give the current or prospective employee who is injured by the
3 violation a cause of action against the public utility or cable
4 corporation to recover damages proximately caused by the
5 violations. Any public utility's or cable corporation's request for
6 state summary criminal history information for purposes of
7 employing current or prospective employees who may be seeking
8 entrance to private residences or adjacent grounds in the course
9 of their employment shall be deemed a "compelling need" as
10 required to be shown in this subdivision.

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

15 (B) For purposes of this paragraph, "cable corporation" means
16 any corporation or firm that transmits or provides television,
17 computer, or telephone services by cable, digital, fiber optic,
18 satellite, or comparable technology to subscribers for a fee.

19 (C) Requests for federal level criminal history information
20 received by the Department of Justice from entities authorized
21 pursuant to subparagraph (A) shall be forwarded to the Federal
22 Bureau of Investigation by the Department of Justice. Federal level
23 criminal history information received or compiled by the
24 Department of Justice may then be disseminated to the entities
25 referenced in subparagraph (A), as authorized by law.

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

29 (ii) Authority for a public utility to request federal level criminal
30 history information under this paragraph shall commence July 1,
31 2005.

32 (11) To any campus of the California State University or the
33 University of California, or any four year college or university
34 accredited by a regional accreditation organization approved by
35 the United States Department of Education, if needed in
36 conjunction with an application for admission by a convicted felon
37 to any special education program for convicted felons, including,
38 but not limited to, university alternatives and halfway houses. Only
39 conviction information shall be furnished. The college or university
40 may require the convicted felon to be fingerprinted, and any inquiry

1 to the department under this section shall include the convicted
2 felon's fingerprints and any other information specified by the
3 department.

4 (12) To any foreign government, if requested by the individual
5 who is the subject of the record requested, if needed in conjunction
6 with the individual's application to adopt a minor child who is a
7 citizen of that foreign nation. Requests for information pursuant
8 to this paragraph shall be in accordance with the process described
9 in Sections 11122 to 11124, inclusive. The response shall be
10 provided to the foreign government or its designee and to the
11 individual who requested the information.

12 (d) Whenever an authorized request for state summary criminal
13 history information pertains to a person whose fingerprints are on
14 file with the Department of Justice and the department has no
15 criminal history of that person, and the information is to be used
16 for employment, licensing, or certification purposes, the fingerprint
17 card accompanying the request for information, if any, may be
18 stamped "no criminal record" and returned to the person or entity
19 making the request.

20 (e) Whenever state summary criminal history information is
21 furnished as the result of an application and is to be used for
22 employment, licensing, or certification purposes, the Department
23 of Justice may charge the person or entity making the request a
24 fee that it determines to be sufficient to reimburse the department
25 for the cost of furnishing the information. In addition, the
26 Department of Justice may add a surcharge to the fee to fund
27 maintenance and improvements to the systems from which the
28 information is obtained. Notwithstanding any other law, any person
29 or entity required to pay a fee to the department for information
30 received under this section may charge the applicant a fee sufficient
31 to reimburse the person or entity for this expense. All moneys
32 received by the department pursuant to this section, Sections
33 11105.3 and 26190, and former Section 13588 of the Education
34 Code shall be deposited in a special account in the General Fund
35 to be available for expenditure by the department to offset costs
36 incurred pursuant to those sections and for maintenance and
37 improvements to the systems from which the information is
38 obtained upon appropriation by the Legislature.

39 (f) Whenever there is a conflict, the processing of criminal
40 fingerprints and fingerprints of applicants for security guard or

1 alarm agent registrations or firearms qualification permits
2 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
3 of the Business and Professions Code shall take priority over the
4 processing of other applicant fingerprints.

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

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

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

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

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

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

32 (A) Every conviction rendered against the applicant.

33 (B) Every arrest for an offense for which the applicant is
34 presently awaiting trial, whether the applicant is incarcerated or
35 has been released on bail or on his or her own recognizance
36 pending trial.

37 (C) Every arrest or detention, except for an arrest or detention
38 resulting in an exoneration, provided however that where the
39 records of the Department of Justice do not contain a disposition

1 for the arrest, the Department of Justice first makes a genuine effort
2 to determine the disposition of the arrest.

3 (D) Every successful diversion.

4 (E) Every date and agency name associated with all retained
5 peace officer or nonsworn law enforcement agency employee
6 preemployment criminal offender record information search
7 requests.

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

14 (2) Notwithstanding any other provision of law, whenever state
15 summary criminal history information is initially furnished
16 pursuant to paragraph (1), the Department of Justice shall
17 disseminate the following information:

18 (A) Every conviction rendered against the applicant.

19 (B) Every arrest for an offense for which the applicant is
20 presently awaiting trial, whether the applicant is incarcerated or
21 has been released on bail or on his or her own recognizance
22 pending trial.

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

32 (D) Every date and agency name associated with all retained
33 peace officer or nonsworn law enforcement agency employee
34 preemployment criminal offender record information search
35 requests.

36 (m) (1) This subdivision shall apply whenever state or federal
37 summary criminal history information is furnished by the
38 Department of Justice as the result of an application by an
39 authorized agency or organization pursuant to Section 1522,
40 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or

1 any statute that incorporates the criteria of any of those sections
2 or this subdivision by reference, and the information is to be used
3 for employment, licensing, or certification purposes.

4 (2) Notwithstanding any other provision of law, whenever state
5 summary criminal history information is initially furnished
6 pursuant to paragraph (1), the Department of Justice shall
7 disseminate the following information:

8 (A) Every conviction of an offense rendered against the
9 applicant, except a conviction for which the applicant has been
10 granted relief pursuant to Section ~~1203.4~~. *1203.4, 1203.4a,*
11 *1203.45, or 1210.1.*

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

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

23 (3) Notwithstanding the requirements of the sections referenced
24 in paragraph (1) of this subdivision, the Department of Justice
25 shall not disseminate information about an arrest subsequently
26 deemed a detention or an arrest that resulted in either the successful
27 completion of a diversion program or exoneration.

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

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

35 (B) Section 11105.3 or 11105.4.

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

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

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

7 (A) Every conviction rendered against the applicant for a
8 violation or attempted violation of any offense specified in
9 subdivision (a) of Section 15660 of the Welfare and Institutions
10 Code, except a conviction for which the applicant has been granted
11 relief pursuant to ~~Section 1203.4~~, *1203.4, 1203.4a, 1203.45, or*
12 *1210.1*. However, with the exception of those offenses for which
13 registration is required pursuant to Section 290, the Department
14 of Justice shall not disseminate information pursuant to this
15 subdivision unless the conviction occurred within 10 years of the
16 date of the agency's request for information or the conviction is
17 over 10 years old but the subject of the request was incarcerated
18 within 10 years of the agency's request for information.

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

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

32 (2) Notwithstanding any other provision of law, whenever state
33 summary criminal history information is initially furnished
34 pursuant to paragraph (1), the Department of Justice shall
35 disseminate the following information:

36 (A) Every conviction rendered against the applicant for a
37 violation or attempted violation of any offense specified in Section
38 550 of the Financial Code, except a conviction for which the
39 applicant has been granted relief pursuant to ~~Section 1203.4~~,
40 *1203.4, 1203.4a, 1203.45, or 1210.1*.

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

6 (p) (1) This subdivision shall apply whenever state or federal
7 criminal history information is furnished by the Department of
8 Justice as the result of an application by an agency, organization,
9 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
10 by a transportation company authorized pursuant to Section
11 11105.3, or any statute that incorporates the criteria of that section
12 or this subdivision by reference, and the information is to be used
13 for employment, licensing, or certification purposes.

14 (2) Notwithstanding any other provisions of law, whenever state
15 summary criminal history information is initially furnished
16 pursuant to paragraph (1), the Department of Justice shall
17 disseminate the following information:

18 (A) Every conviction rendered against the applicant, except a
19 conviction for which the applicant has been granted relief pursuant
20 to ~~Section 1203.4~~ *1203.4, 1203.4a, 1203.45, or 1210.1*.

21 (B) Every arrest for an offense for which the applicant is
22 presently awaiting trial, whether the applicant is incarcerated or
23 has been released on bail or on his or her own recognizance
24 pending trial.

25 (q) All agencies, organizations, or individuals defined in
26 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
27 Department of Justice for subsequent notification pursuant to
28 Section 11105.2. This subdivision shall not supersede sections that
29 mandate an agency, organization, or individual to contract with
30 the Department of Justice for subsequent notification pursuant to
31 Section 11105.2.

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

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

38 (t) Whenever state or federal summary criminal history
39 information is furnished by the Department of Justice as the result
40 of an application by an authorized agency, organization, or

1 individual defined in subdivisions (k) to (p), inclusive, and the
2 information is to be used for employment, licensing, or certification
3 purposes, the authorized agency, organization, or individual shall
4 expeditiously furnish a copy of the information to the person to
5 whom the information relates if the information is a basis for an
6 adverse employment, licensing, or certification decision. When
7 furnished other than in person, the copy shall be delivered to the
8 last contact information provided by the applicant.

9 ~~SEC. 7.~~

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