

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 1107

Introduced by Committee on Public Safety (Senators Alquist (Chair), Cedillo, Margett, Migden, Perata, Poochigian, and Romero)

March 7, 2005

An act to amend Sections 679.05, 1524, 11105, 11167, and 11170 of, *and to repeal Section 3085.1 of*, the Penal Code, relating to public safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 1107, as amended, Committee on Public Safety. Public safety: omnibus bill.

Existing law generally regulates public safety.

This bill would make various technical, nonsubstantive changes to provisions related to domestic violence, summary criminal history information, and child abuse reporting.

Existing law provides that the presiding judge of the superior court in Contra Costa County may appoint an alternate for the public member on the county board of parole commissioners.

This bill would repeal that provision.

Existing law ~~requires~~ *identifies certain persons as* mandated reporters of child abuse and neglect, and requires their reports to law enforcement to contain specified information, including the name of the child victim, and to include additional information if it is known.

This bill would provide that the name of the child shall be included if it is known.

Existing law provides that the Department of Justice shall maintain an index of all reports of child abuse and severe neglect it receives. Existing law provides that the department may charge a fee whenever

this information is furnished to specified persons or entities as the result of an application for employment or licensing.

This bill would provide that the department may charge this fee when furnishing this information to ~~the~~ a government agency conducting a background investigation of a person seeking employment as a peace officer.

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

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

1 SECTION 1. Section 679.05 of the Penal Code is amended to
 2 read:

3 679.05. (a) A victim of domestic violence or abuse, as
 4 defined in Sections 6203 or 6211 of the Family Code, or Section
 5 13700 of the Penal Code, has the right to have a domestic
 6 violence counselor and a support person of the victim’s choosing
 7 present at any interview by law enforcement authorities,
 8 prosecutors, or defense attorneys. However, the support person
 9 may be excluded from an interview by law enforcement or the
 10 prosecutor if the law enforcement authority or the prosecutor
 11 determines that the presence of that individual would be
 12 detrimental to the purpose of the interview. As used in this
 13 section, “domestic violence counselor” is defined in Section
 14 1037.1 of the Evidence Code.

15 (b) (1) Prior to the commencement of the initial interview by
 16 law enforcement authorities or the ~~district attorney~~ prosecutor
 17 pertaining to any criminal action arising out of a domestic
 18 violence incident, a victim of domestic violence or abuse, as
 19 defined in ~~Sections~~ Section 6203 or 6211 of the Family Code, or
 20 Section 13700 of this code, shall be notified orally or in writing
 21 by the attending law enforcement authority or prosecutor that the
 22 victim has the right to have a domestic violence counselor and a
 23 support person of the victim’s choosing present at the interview
 24 or contact. This subdivision applies to investigators and agents
 25 employed or retained by law enforcement or the prosecutor.

26 (2) At the time the victim is advised of his or her rights
 27 pursuant to paragraph (1), the attending law enforcement
 28 authority or prosecutor shall also advise the victim of the right to
 29 have a domestic violence counselor and a support person present

1 at any interview by the defense attorney or investigators or
2 agents employed by the defense attorney.

3 (c) An initial investigation by law enforcement to determine
4 whether a crime has been committed and the identity of the
5 suspects shall not constitute a law enforcement interview for
6 purposes of this section.

7 *SEC. 2. Section 1524 of the Penal Code, as amended by*
8 *Section 8 of Chapter 2 of the 4th Extraordinary Session of the*
9 *Statutes of 2004, is amended to read:*

10 1524. (a) A search warrant may be issued upon any of the
11 following grounds:

- 12 (1) When the property was stolen or embezzled.
- 13 (2) When the property or things were used as the means of
14 committing a felony.
- 15 (3) When the property or things are in the possession of any
16 person with the intent to use them as a means of committing a
17 public offense, or in the possession of another to whom he or she
18 may have delivered them for the purpose of concealing them or
19 preventing their being discovered.
- 20 (4) When the property or things to be seized consist of any
21 item or constitute any evidence that tends to show a felony has
22 been committed, or tends to show that a particular person has
23 committed a felony.
- 24 (5) When the property or things to be seized consist of
25 evidence that tends to show that sexual exploitation of a child, in
26 violation of Section 311.3, or possession of matter depicting
27 sexual conduct of a person under the age of 18 years, in violation
28 of Section 311.11, has occurred or is occurring.
- 29 (6) When there is a warrant to arrest a person.
- 30 (7) When a provider of electronic communication service or
31 remote computing service has records or evidence, as specified in
32 Section 1524.3, showing that property was stolen or embezzled
33 constituting a misdemeanor, or that property or things are in the
34 possession of any person with the intent to use them as a means
35 of committing a misdemeanor public offense, or in the
36 possession of another to whom he or she may have delivered
37 them for the purpose of concealing them or preventing their
38 discovery.
- 39 (8) When the property or things to be seized include an item or
40 any evidence that tends to show a violation of Section 3700.5 of

1 the Labor Code, or tends to show that a particular person has
2 violated Section 3700.5 of the Labor Code.

3 (b) The property or things or person or persons described in
4 subdivision (a) may be taken on the warrant from any place, or
5 from any person in whose possession the property or things may
6 be.

7 (c) Notwithstanding subdivision (a) or (b), no search warrant
8 shall issue for any documentary evidence in the possession or
9 under the control of any person, who is a lawyer as defined in
10 Section 950 of the Evidence Code, a physician as defined in
11 Section 990 of the Evidence Code, a psychotherapist as defined
12 in Section 1010 of the Evidence Code, or a ~~clergyman~~ *member of*
13 *the clergy* as defined in Section 1030 of the Evidence Code, and
14 who is not reasonably suspected of engaging or having engaged
15 in criminal activity related to the documentary evidence for
16 which a warrant is requested unless the following procedure has
17 been complied with:

18 (1) At the time of the issuance of the warrant the court shall
19 appoint a special master in accordance with subdivision (d) to
20 accompany the person who will serve the warrant. Upon service
21 of the warrant, the special master shall inform the party served of
22 the specific items being sought and that the party shall have the
23 opportunity to provide the items requested. If the party, in the
24 judgment of the special master, fails to provide the items
25 requested, the special master shall conduct a search for the items
26 in the areas indicated in the search warrant.

27 (2) If the party who has been served states that an item or
28 items should not be disclosed, they shall be sealed by the special
29 master and taken to court for a hearing.

30 At the hearing, the party searched shall be entitled to raise any
31 issues that may be raised pursuant to Section 1538.5 as well as a
32 claim that the item or items are privileged, as provided by law.
33 The hearing shall be held in the superior court. The court shall
34 provide sufficient time for the parties to obtain counsel and make
35 any motions or present any evidence. The hearing shall be held
36 within three days of the service of the warrant unless the court
37 makes a finding that the expedited hearing is impracticable. In
38 that case the matter shall be heard at the earliest possible time.

39 If an item or items are taken to court for a hearing, any
40 limitations of time prescribed in Chapter 2 (commencing with

1 Section 797) of Title 3 of Part 2 shall be tolled from the time of
2 the seizure until the final conclusion of the hearing, including any
3 associated writ or appellate proceedings.

4 (3) The warrant shall, whenever practicable, be served during
5 normal business hours. In addition, the warrant shall be served
6 upon a party who appears to have possession or control of the
7 items sought. If, after reasonable efforts, the party serving the
8 warrant is unable to locate the person, the special master shall
9 seal and return to the court, for determination by the court, any
10 item that appears to be privileged as provided by law.

11 (d) As used in this section, a “special master” is an attorney
12 who is a member in good standing of the California State Bar and
13 who has been selected from a list of qualified attorneys that is
14 maintained by the State Bar particularly for the purposes of
15 conducting the searches described in this section. These attorneys
16 shall serve without compensation. A special master shall be
17 considered a public employee, and the governmental entity that
18 caused the search warrant to be issued shall be considered the
19 employer of the special master and the applicable public entity,
20 for purposes of Division 3.6 (commencing with Section 810) of
21 Title 1 of the Government Code, relating to claims and actions
22 against public entities and public employees. In selecting the
23 special master, the court shall make every reasonable effort to
24 ensure that the person selected has no relationship with any of the
25 parties involved in the pending matter. Any information obtained
26 by the special master shall be confidential and may not be
27 divulged except in direct response to inquiry by the court.

28 In any case in which the magistrate determines that, after
29 reasonable efforts have been made to obtain a special master, a
30 special master is not available and would not be available within
31 a reasonable period of time, the magistrate may direct the party
32 seeking the order to conduct the search in the manner described
33 in this section in lieu of the special master.

34 (e) Any search conducted pursuant to this section by a special
35 master may be conducted in a manner that permits the party
36 serving the warrant or his or her designee to accompany the
37 special master as he or she conducts his or her search. However,
38 that party or his or her designee may not participate in the search
39 nor shall he or she examine any of the items being searched by

1 the special master except upon agreement of the party upon
2 whom the warrant has been served.

3 (f) As used in this section, “documentary evidence” includes,
4 but is not limited to, writings, documents, blueprints, drawings,
5 photographs, computer printouts, microfilms, X-rays, files,
6 diagrams, ledgers, books, tapes, audio and video recordings,
7 films or papers of any type or description.

8 (g) No warrant shall issue for any item or items described in
9 Section 1070 of the Evidence Code.

10 (h) Notwithstanding any other law, no claim of attorney work
11 product as described in ~~Section 2018 Chapter 4 (commencing~~
12 ~~with Section 2018.010) of Title 4 of Part 4~~ of the Code of Civil
13 Procedure shall be sustained where there is probable cause to
14 believe that the lawyer is engaging or has engaged in criminal
15 activity related to the documentary evidence for which a warrant
16 is requested unless it is established at the hearing with respect to
17 the documentary evidence seized under the warrant that the
18 services of the lawyer were not sought or obtained to enable or
19 aid anyone to commit or plan to commit a crime or a fraud.

20 (i) Nothing in this section is intended to limit an attorney’s
21 ability to request an in camera hearing pursuant to the holding of
22 the Supreme Court of California in *People v. Superior Court*
23 (*Laff*) (2001) 25 Cal.4th 703.

24 (j) In addition to any other circumstance permitting a
25 magistrate to issue a warrant for a person or property in another
26 county, when the property or things to be seized consist of any
27 item or constitute any evidence that tends to show a violation of
28 Section 530.5, the magistrate may issue a warrant to search a
29 person or property located in another county if the person whose
30 identifying information was taken or used resides in the same
31 county as the issuing court.

32 *SEC. 3. Section 3085.1 of the Penal Code is repealed.*

33 ~~3085.1. The presiding judge of the superior court in Contra~~
34 ~~Costa County may appoint an alternate for the public member~~
35 ~~who shall serve in the absence of the public member.~~

36 ~~SEC. 2.~~

37 *SEC. 4. Section 11105 of the Penal Code is amended to read:*

38 11105. (a) (1) The Department of Justice shall maintain state
39 summary criminal history information.

40 (2) As used in this section:

1 (A) “State summary criminal history information” means the
2 master record of information compiled by the Attorney General
3 pertaining to the identification and criminal history of any
4 person, such as name, date of birth, physical description,
5 fingerprints, photographs, date of arrests, arresting agencies and
6 booking numbers, charges, dispositions, and similar data about
7 the person.

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

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

22 (1) The courts of the state.

23 (2) Peace officers of the state as defined in Section 830.1,
24 subdivisions (a) and (e) of Section 830.2, subdivision (a) of
25 Section 830.3, subdivisions (a) and (b) of Section 830.5, and
26 subdivision (a) of Section 830.31.

27 (3) District attorneys of the state.

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

29 (5) Probation officers of the state.

30 (6) Parole officers of the state.

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

34 (8) A public defender or attorney of record when representing
35 a person in a criminal case and if authorized access by statutory
36 or decisional law.

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

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

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

23 (11) The subject of the state summary criminal history
24 information under procedures established under Article 5
25 (commencing with Section 11120) of Chapter 1 of Title 1 of Part
26 4.

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

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

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

39 (15) Any humane society, or society for the prevention of
40 cruelty to animals, for the specific purpose of complying with

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

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

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

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

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

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

3 (3) To a peace officer of another country.

4 (4) To public officers (other than peace officers) of the United
5 States, other states, or possessions or territories of the United
6 States, provided that access to records similar to state summary
7 criminal history information is expressly authorized by a statute
8 of the United States, other states, or possessions or territories of
9 the United States if the information is needed for the
10 performance of their official duties.

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

15 (6) The courts of the United States, other states, or territories
16 or possessions of the United States.

17 (7) Peace officers of the United States, other states, or
18 territories or possessions of the United States.

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

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

32 If the Attorney General supplies the data pursuant to this
33 paragraph, the Attorney General shall furnish a copy of the data
34 to the current or prospective employee to whom the data relates.

35 Any information obtained from the state summary criminal
36 history is confidential and the receiving public utility or cable
37 corporation shall not disclose its contents, other than for the
38 purpose for which it was acquired. The state summary criminal
39 history information in the possession of the public utility or cable
40 corporation and all copies made from it shall be destroyed not

1 more than 30 days after employment or promotion or transfer is
2 denied or granted, except for those cases where a current or
3 prospective employee is out on bail or on his or her own
4 recognizance pending trial, in which case the state summary
5 criminal history information and all copies shall be destroyed not
6 more than 30 days after the case is resolved.

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

17 Nothing in this section shall be construed as imposing any duty
18 upon public utilities or cable corporations to request state
19 summary criminal history information on any current or
20 prospective employees.

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

25 (C) Requests for federal level criminal history information
26 received by the Department of Justice from entities authorized
27 pursuant to subparagraph (A) shall be forwarded to the Federal
28 Bureau of Investigation by the Department of Justice. Federal
29 level criminal history information received or compiled by the
30 Department of Justice may then be disseminated to the entities
31 referenced in subparagraph (A), as authorized by law.

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

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

38 (10) To any campus of the California State University or the
39 University of California, or any four-year college or university
40 accredited by a regional accreditation organization approved by

1 the United States Department of Education, if needed in
2 conjunction with an application for admission by a convicted
3 felon to any special education program for convicted felons,
4 including, but not limited to, university alternatives and halfway
5 houses. Only conviction information shall be furnished. The
6 college or university may require the convicted felon to be
7 fingerprinted, and any inquiry to the department under this
8 section shall include the convicted felon's fingerprints and any
9 other information specified by the department.

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

18 (e) Whenever state summary criminal history information is
19 furnished as the result of an application and is to be used for
20 employment, licensing, or certification purposes, the Department
21 of Justice may charge the person or entity making the request a
22 fee that it determines to be sufficient to reimburse the department
23 for the cost of furnishing the information. In addition, the
24 Department of Justice may add a surcharge to the fee to fund
25 maintenance and improvements to the systems from which the
26 information is obtained. Notwithstanding any other law, any
27 person or entity required to pay a fee to the department for
28 information received under this section may charge the applicant
29 a fee sufficient to reimburse the person or entity for this expense.
30 All moneys received by the department pursuant to this section,
31 Sections 11105.3 and 12054 of the Penal Code, and Section
32 13588 of the Education Code shall be deposited in a special
33 account in the General Fund to be available for expenditure by
34 the department to offset costs incurred pursuant to those sections
35 and for maintenance and improvements to the systems from
36 which the information is obtained upon appropriation by the
37 Legislature.

38 (f) Whenever there is a conflict, the processing of criminal
39 fingerprints and fingerprints of applicants for security guard or
40 alarm agent registrations or firearms qualification permits

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

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

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

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

17 (j) The state summary criminal history information shall
18 include any finding of mental incompetence pursuant to Chapter
19 6 (commencing with Section 1367) of Title 10 of Part 2 arising
20 out of a complaint charging a felony offense specified in Section
21 290.

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

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

33 (A) Every conviction rendered against the applicant.

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

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

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

3 (D) Every successful diversion.

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

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

14 (A) Every conviction rendered against the applicant.

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

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

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

36 (2) Notwithstanding any other provision of law, whenever
37 state summary criminal history information is furnished pursuant
38 to paragraph (1), the Department of Justice shall disseminate the
39 following information:

1 (A) Every conviction of an offense rendered against the
2 applicant.

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

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

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

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

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

28 (B) Section 11105.3 or 11105.4.

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

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

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

39 (A) Every conviction rendered against the applicant for a
40 violation or attempted violation of any offense specified in

1 subdivision (a) of Section 15660 of the Welfare and Institutions
2 Code. However, with the exception of those offenses for which
3 registration is required pursuant to Section 290, the Department
4 of Justice shall not disseminate information pursuant to this
5 subdivision unless the conviction occurred within 10 years of the
6 date of the agency's request for information or the conviction is
7 over 10 years old but the subject of the request was incarcerated
8 within 10 years of the agency's request for information.

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

15 (o) (1) This subdivision shall apply whenever state or federal
16 summary criminal history information is furnished by the
17 Department of Justice as the result of an application by an
18 authorized agency or organization pursuant to Section 261,
19 777.5, 4990, 6525, or 14409.2, of the Financial Code, or any
20 statute that incorporates the criteria of either of those sections or
21 this subdivision by reference, and the information is to be used
22 for employment, licensing, or certification purposes.

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

27 (A) Every conviction rendered against the applicant for a
28 violation or attempted violation of any offense specified in
29 Section 777.5 of the Financial Code.

30 (B) Every arrest for a violation or attempted violation of an
31 offense specified in Section 777.5 of the Financial Code for
32 which the applicant is presently awaiting trial, whether the
33 applicant is incarcerated or has been released on bail or on his or
34 her own recognizance pending trial.

35 (p) (1) This subdivision shall apply whenever state or federal
36 criminal history information is furnished by the Department of
37 Justice as the result of an application by an agency, organization,
38 or individual not defined in subdivision (k), (l), (m), (n), or (o),
39 or by a transportation company authorized pursuant to Section
40 11105.3, or any statute that incorporates the criteria of that

1 section or this subdivision by reference, and the information is to
2 be used for employment, licensing, or certification purposes.

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

7 (A) Every conviction rendered against the applicant.

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

12 (q) All agencies, organizations, or individuals defined in
13 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
14 Department of Justice for subsequent arrest notification pursuant
15 to Section 11105.2. This subdivision shall not supersede sections
16 that mandate an agency, organization, or individual to contract
17 with the Department of Justice for subsequent arrest notification
18 pursuant to Section 11105.2.

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

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

25 ~~SEC. 3.~~

26 *SEC. 5.* Section 11167 of the Penal Code is amended to read:

27 11167. (a) Reports of suspected child abuse or neglect
28 pursuant to Section 11166 shall include the name, business
29 address, and telephone number of the mandated reporter; the
30 capacity that makes the person a mandated reporter; and the
31 information that gave rise to the reasonable suspicion of child
32 abuse or neglect and the source or sources of that information. If
33 a report is made, the following information, if known, shall also
34 be included in the report: the child's name, the child's address,
35 present location, and, if applicable, school, grade, and class; the
36 names, addresses, and telephone numbers of the child's parents
37 or guardians; and the name, address, telephone number, and other
38 relevant personal information about the person or persons who
39 might have abused or neglected the child. The mandated reporter

1 shall make a report even if some of this information is not known
2 or is uncertain to him or her.

3 (b) Information relevant to the incident of child abuse or
4 neglect may be given to an investigator from an agency that is
5 investigating the known or suspected case of child abuse or
6 neglect.

7 (c) Information relevant to the incident of child abuse or
8 neglect, including the investigation report and other pertinent
9 materials, may be given to the licensing agency when it is
10 investigating a known or suspected case of child abuse or
11 neglect.

12 (d) (1) The identity of all persons who report under this article
13 shall be confidential and disclosed only among agencies
14 receiving or investigating mandated reports, to the ~~district~~
15 ~~attorney~~ *prosecutor* in a criminal prosecution or in an action
16 initiated under Section 602 of the Welfare and Institutions Code
17 arising from alleged child abuse, or to counsel appointed
18 pursuant to subdivision (c) of Section 317 of the Welfare and
19 Institutions Code, or to the county counsel or ~~district attorney~~
20 *prosecutor* in a proceeding under Part 4 (commencing with
21 Section 7800) of Division 12 of the Family Code or Section 300
22 of the Welfare and Institutions Code, or to a licensing agency
23 when abuse or neglect in out-of-home care is reasonably
24 suspected, or when those persons waive confidentiality, or by
25 court order.

26 (2) No agency or person listed in this subdivision shall
27 disclose the identity of any person who reports under this article
28 to that person's employer, except with the employee's consent or
29 by court order.

30 (e) Notwithstanding the confidentiality requirements of this
31 section, a representative of a child protective services agency
32 performing an investigation that results from a report of
33 suspected child abuse or neglect made pursuant to Section 11166,
34 at the time of the initial contact with the individual who is subject
35 to the investigation, shall advise the individual of the complaints
36 or allegations against him or her, in a manner that is consistent
37 with laws protecting the identity of the reporter under this article.

38 (f) Persons who may report pursuant to subdivision (f) of
39 Section 11166 are not required to include their names.

1 ~~SEC. 4.~~

2 *SEC. 6.* Section 11170 of the Penal Code is amended to read:

3 11170. (a) (1) The Department of Justice shall maintain an
4 index of all reports of child abuse and severe neglect submitted
5 pursuant to Section 11169. The index shall be continually
6 updated by the department and shall not contain any reports that
7 are determined to be unfounded. The department may adopt rules
8 governing recordkeeping and reporting pursuant to this article.

9 (2) The department shall act only as a repository of reports of
10 suspected child abuse and severe neglect to be maintained in the
11 Child Abuse Central Index pursuant to paragraph (1). The
12 submitting agencies are responsible for the accuracy,
13 completeness, and retention of the reports described in this
14 section. The department shall be responsible for ensuring that the
15 Child Abuse Central Index accurately reflects the report it
16 receives from the submitting agency.

17 (3) Information from an inconclusive or unsubstantiated report
18 filed pursuant to subdivision (a) of Section 11169 shall be
19 deleted from the Child Abuse Central Index after 10 years if no
20 subsequent report concerning the same suspected child abuser is
21 received within that time period. If a subsequent report is
22 received within that 10-year period, information from any prior
23 report, as well as any subsequently filed report, shall be
24 maintained on the Child Abuse Central Index for a period of 10
25 years from the time the most recent report is received by the
26 department.

27 (b) (1) The Department of Justice shall immediately notify an
28 agency that submits a report pursuant to Section 11169, or a
29 ~~district attorney~~ *prosecutor* who requests notification, of any
30 information maintained pursuant to subdivision (a) that is
31 relevant to the known or suspected instance of child abuse or
32 severe neglect reported by the agency. The agency shall make
33 that information available to the reporting medical practitioner,
34 child custodian, guardian ad litem appointed under Section 326,
35 or counsel appointed under Section 317 or 318 of the Welfare
36 and Institutions Code, or the appropriate licensing agency, if he
37 or she is treating or investigating a case of known or suspected
38 child abuse or severe neglect.

39 (2) When a report is made pursuant to subdivision (a) of
40 Section 11166, the investigating agency, upon completion of the

1 investigation or after there has been a final disposition in the
2 matter, shall inform the person required to report of the results of
3 the investigation and of any action the agency is taking with
4 regard to the child or family.

5 (3) The Department of Justice shall make available to a law
6 enforcement agency, county welfare department, or county
7 probation department that is conducting a child abuse
8 investigation relevant information contained in the index.

9 (4) The department shall make available to the State
10 Department of Social Services or to any county licensing agency
11 that has contracted with the state for the performance of licensing
12 duties information regarding a known or suspected child abuser
13 maintained pursuant to this section and subdivision (a) of Section
14 11169 concerning any person who is an applicant for licensure or
15 any adult who resides or is employed in the home of an applicant
16 for licensure or who is an applicant for employment in a position
17 having supervisory or disciplinary power over a child or
18 children, or who will provide 24-hour care for a child or children
19 in a residential home or facility, pursuant to Section 1522.1 or
20 1596.877 of the Health and Safety Code, or Section 8714, 8802,
21 8912, or 9000 of the Family Code.

22 (5) For purposes of child death review, the Department of
23 Justice shall make available to the chairperson, or the
24 chairperson's designee, for each county child death review team,
25 or the State Child Death Review Council, information maintained
26 in the Child Abuse Central Index pursuant to subdivision (a) of
27 Section 11170 relating to the death of one or more children and
28 any prior child abuse or neglect investigation reports maintained
29 involving the same victims, siblings, or suspects. Local child
30 death review teams may share any relevant information regarding
31 case reviews involving child death with other child death review
32 teams.

33 (6) The department shall make available to investigative
34 agencies or probation officers, or court investigators acting
35 pursuant to Section 1513 of the Probate Code, responsible for
36 placing children or assessing the possible placement of children
37 pursuant to Article 6 (commencing with Section 300), Article 7
38 (commencing with Section 305), Article 10 (commencing with
39 Section 360), or Article 14 (commencing with Section 601) of
40 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions

1 Code, Article 2 (commencing with Section 1510) or Article 3
2 (commencing with Section 1540) of Chapter 1 of Part 2 of
3 Division 4 of the Probate Code, information regarding a known
4 or suspected child abuser contained in the index concerning any
5 adult residing in the home where the child may be placed, when
6 this information is requested for purposes of ensuring that the
7 placement is in the best interests of the child. Upon receipt of
8 relevant information concerning child abuse or neglect
9 investigation reports contained in the index from the Department
10 of Justice pursuant to this subdivision, the agency or court
11 investigator shall notify, in writing, the person listed in the Child
12 Abuse Central Index that he or she is in the index. The
13 notification shall include the name of the reporting agency and
14 the date of the report.

15 (7) The Department of Justice shall make available to a
16 government agency conducting a background investigation
17 pursuant to Section 1031 of the Government Code of an
18 applicant seeking employment as a peace officer, as defined in
19 Section 830, information regarding a known or suspected child
20 abuser maintained pursuant to this section concerning the
21 applicant.

22 (8) (A) Persons or agencies, as specified in subdivision (b), if
23 investigating a case of known or suspected child abuse or
24 neglect, or the State Department of Social Services or any county
25 licensing agency pursuant to paragraph (4), or an investigative
26 agency, probation officer, or court investigator responsible for
27 placing children or assessing the possible placement of children
28 pursuant to paragraph (6), or a government agency conducting a
29 background investigation of an applicant seeking employment as
30 a peace officer pursuant to paragraph (7), to whom disclosure of
31 any information maintained pursuant to subdivision (a) is
32 authorized, are responsible for obtaining the original
33 investigative report from the reporting agency, and for drawing
34 independent conclusions regarding the quality of the evidence
35 disclosed, and its sufficiency for making decisions regarding
36 investigation, prosecution, licensing, placement of a child, or
37 employment as a peace officer.

38 (B) If Child Abuse Central Index information is requested by
39 an agency for the temporary placement of a child in an
40 emergency situation pursuant to Article 7 (commencing with

1 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
2 and Institutions Code, the department is exempt from the
3 requirements of Section 1798.18 of the Civil Code if compliance
4 would cause a delay in providing an expedited response to the
5 agency's inquiry and if further delay in placement may be
6 detrimental to the child.

7 (9) (A) Whenever information contained in the Department of
8 Justice files is furnished as the result of an application for
9 employment or licensing pursuant to paragraph (4) or (7), the
10 Department of Justice may charge the person or entity making
11 the request a fee. The fee shall not exceed the reasonable costs to
12 the department of providing the information. The only increase
13 shall be at a rate not to exceed the legislatively approved
14 cost-of-living adjustment for the department. In no case shall the
15 fee exceed fifteen dollars (\$15).

16 (B) All moneys received by the department pursuant to this
17 section to process trustline applications for purposes of Chapter
18 3.35 (commencing with Section 1596.60) of Division 2 of the
19 Health and Safety Code shall be deposited in a special account in
20 the General Fund that is hereby established and named the
21 Department of Justice Child Abuse Fund. Moneys in the fund
22 shall be available, upon appropriation by the Legislature, for
23 expenditure by the department to offset the costs incurred to
24 process trustline automated child abuse or neglect system checks
25 pursuant to this section.

26 (C) All moneys, other than that described in subparagraph (B),
27 received by the department pursuant to this paragraph shall be
28 deposited in a special account in the General Fund which is
29 hereby created and named the Department of Justice Sexual
30 Habitual Offender Fund. The funds shall be available, upon
31 appropriation by the Legislature, for expenditure by the
32 department to offset the costs incurred pursuant to Chapter 9.5
33 (commencing with Section 13885) and Chapter 10 (commencing
34 with Section 13890) of Title 6 of Part 4, and the DNA and
35 Forensic Identification Data Base and Data Bank Act of 1998
36 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1),
37 and for maintenance and improvements to the statewide Sexual
38 Habitual Offender Program and the DNA offender identification
39 file (CAL-DNA) authorized by Chapter 9.5 (commencing with
40 Section 13885) of Title 6 of Part 4 and the DNA and Forensic

1 Identification Data Base and Data Bank Act of 1998 (Chapter 6
2 (commencing with Section 295) of Title 9 of Part 1).

3 (c) The Department of Justice shall make available to any
4 agency responsible for placing children pursuant to Article 7
5 (commencing with Section 305) of Chapter 2 of Part 1 of
6 Division 2 of the Welfare and Institutions Code, upon request,
7 relevant information concerning child abuse or neglect reports
8 contained in the index, when making a placement with a
9 responsible relative pursuant to Sections 281.5, 305, and 361.3 of
10 the Welfare and Institutions Code. Upon receipt of relevant
11 information concerning child abuse or neglect reports contained
12 in the index from the Department of Justice pursuant to this
13 subdivision, the agency shall also notify in writing the person
14 listed in the Child Abuse Central Index that he or she is in the
15 index. The notification shall include the location of the original
16 investigative report and the submitting agency. The notification
17 shall be submitted to the person listed at the same time that all
18 other parties are notified of the information, and no later than the
19 actual judicial proceeding that determines placement.

20 If Child Abuse Central Index information is requested by an
21 agency for the placement of a child with a responsible relative in
22 an emergency situation pursuant to Article 7 (commencing with
23 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
24 and Institutions Code, the department is exempt from the
25 requirements of Section 1798.18 of the Civil Code if compliance
26 would cause a delay in providing an expedited response to the
27 child protective agency's inquiry and if further delay in
28 placement may be detrimental to the child.

29 (d) The department shall make available any information
30 maintained pursuant to subdivision (a) to out-of-state law
31 enforcement agencies conducting investigations of known or
32 suspected child abuse or neglect only when an agency makes the
33 request for information in writing and on official letterhead,
34 identifying the suspected abuser or victim by name. The request
35 shall be signed by the department supervisor of the requesting
36 law enforcement agency. The written requests shall cite the
37 out-of-state statute or interstate compact provision that requires
38 that the information contained within these reports shall be
39 disclosed only to law enforcement, prosecutorial entities, or
40 multidisciplinary investigative teams, and shall cite the criminal

1 penalties for unlawful disclosure of any confidential information
2 provided by the requesting state or the applicable interstate
3 compact provision. In the absence of a specified out-of-state
4 statute or interstate compact provision that requires that the
5 information contained within these reports shall be disclosed
6 only to law enforcement, prosecutorial entities, or
7 multidisciplinary investigative teams, and criminal penalties
8 equivalent to the penalties in California for unlawful disclosure,
9 access shall be denied.

10 (e) (1) Any person may determine if he or she is listed in the
11 Child Abuse Central Index by making a request in writing to the
12 Department of Justice. The request shall be notarized and include
13 the person's name, address, date of birth, and either a social
14 security number or a California identification number. Upon
15 receipt of a notarized request, the Department of Justice shall
16 make available to the requesting person information identifying
17 the date of the report and the submitting agency. The requesting
18 person is responsible for obtaining the investigative report from
19 the submitting agency pursuant to paragraph (11) of subdivision
20 (b) of Section 11167.5.

21 (2) No person or agency shall require or request another
22 person to furnish a copy of a record concerning himself or
23 herself, or notification that a record concerning himself or herself
24 exists or does not exist, pursuant to paragraph (1) of this
25 subdivision.

26 (f) If a person is listed in the Child Abuse Central Index only
27 as a victim of child abuse or neglect, and that person is 18 years
28 of age or older, that person may have his or her name removed
29 from the index by making a written request to the Department of
30 Justice. The request shall be notarized and include the person's
31 name, address, social security number, and date of birth.

32 ~~SEC. 5.~~

33 *SEC. 7.* Any section of any act enacted by the Legislature
34 during the 2005 calendar year that takes effect on or before
35 January 1, 2006, and that amends, amends and renumbers, adds,
36 repeals and adds, or repeals any one or more of the sections
37 affected by this act, shall prevail over this act, whether this act is
38 enacted prior to, or subsequent to, the enactment of this act. The
39 repeal, or repeal and addition, of any article, chapter, part, title,
40 or division of any code by this act shall not become operative if

1 any section of any other act that is enacted by the Legislature
2 during the 2005 calendar year and takes effect on or before
3 January 1, 2006, amends, amends and renumbers, adds, repeals
4 and adds, or repeals any section contained in that article, chapter,
5 part, title, or division.

O