

**Introduced by Senator Ackerman**

February 20, 2007

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An act to amend Section 11105 of the Penal Code, relating to criminal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as introduced, Ackerman. Criminal history information.

Existing law requires the Attorney General to furnish various agencies and entities with a person's state criminal history information for certain purposes, as specified.

This bill would expand the list of agencies entitled to receive criminal history reports to include an agency providing conservatorship investigations relating to a proposed conservator.

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 11105 of the Penal Code is amended to  
2 read:  
3 11105. (a) (1) The Department of Justice shall maintain state  
4 summary criminal history information.  
5 (2) As used in this section:  
6 (A) "State summary criminal history information" means the  
7 master record of information compiled by the Attorney General  
8 pertaining to the identification and criminal history of any person,  
9 such as name, date of birth, physical description, fingerprints,  
10 photographs, date of arrests, arresting agencies and booking  
11 numbers, charges, dispositions, and similar data about the person.

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

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

14 (1) The courts of the state.

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

19 (3) District attorneys of the state.

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

21 (5) Probation officers of the state.

22 (6) Parole officers of the state.

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

26 (8) A public defender or attorney of record when representing  
27 a person in a criminal case, or parole revocation or revocation  
28 extension proceeding, and if authorized access by statutory or  
29 decisional law.

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

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

16 (11) The subject of the state summary criminal history  
17 information under procedures established under Article 5  
18 (commencing with Section 11120) of Chapter 1 of Title 1 of Part  
19 4.

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

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

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

32 (15) Any humane society, or society for the prevention of cruelty  
33 to animals, for the specific purpose of complying with Section  
34 14502 of the Corporations Code for the appointment of level 1  
35 humane officers.

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

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

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

17 (18) *An agency providing conservatorship investigations relating*  
18 *to a proposed conservator pursuant to Section 5356 of the Welfare*  
19 *and Institutions Code.*

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

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

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

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

38 (4) To public officers (other than peace officers) of the United  
39 States, other states, or possessions or territories of the United  
40 States, provided that access to records similar to state summary

1 criminal history information is expressly authorized by a statute  
2 of the United States, other states, or possessions or territories of  
3 the United States if the information is needed for the performance  
4 of their official duties.

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

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

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

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

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

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

11 Nothing in this section shall be construed as imposing any duty  
12 upon public utilities or cable corporations to request state summary  
13 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 (10) 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 (d) Whenever an authorized request for state summary criminal  
5 history information pertains to a person whose fingerprints are on  
6 file with the Department of Justice and the department has no  
7 criminal history of that person, and the information is to be used  
8 for employment, licensing, or certification purposes, the fingerprint  
9 card accompanying the request for information, if any, may be  
10 stamped "no criminal record" and returned to the person or entity  
11 making the request.

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

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

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

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

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

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

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

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

25 (A) Every conviction rendered against the applicant.

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

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

35 (D) Every successful diversion.

36 (l) (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 a criminal  
39 justice agency or organization as defined in Section 13101 of the

1 Penal Code, and the information is to be used for criminal justice  
2 employment, licensing, or certification purposes.

3 (2) Notwithstanding any other provision of law, whenever state  
4 summary criminal history information is furnished pursuant to  
5 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 (C) Every arrest for an offense for which the records of the  
13 Department of Justice do not contain a disposition or did not result  
14 in a conviction, provided that the Department of Justice first makes  
15 a genuine effort to determine the disposition of the arrest. However,  
16 information concerning an arrest shall not be disclosed if the  
17 records of the Department of Justice indicate or if the genuine  
18 effort reveals that the subject was exonerated, successfully  
19 completed a diversion or deferred entry of judgment program, or  
20 the arrest was deemed a detention.

21 (m) (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 pursuant to Section 1522,  
25 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or  
26 any statute that incorporates the criteria of any of those sections  
27 or this subdivision by reference, and the information is to be used  
28 for employment, licensing, or certification purposes.

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

33 (A) Every conviction of an offense rendered against the  
34 applicant.

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

39 (C) Every arrest for an offense for which the Department of  
40 Social Services is required by paragraph (1) of subdivision (a) of

1 Section 1522 of the Health and Safety Code to determine if an  
2 applicant has been arrested. However, if the records of the  
3 Department of Justice do not contain a disposition for an arrest,  
4 the Department of Justice shall first make a genuine effort to  
5 determine the disposition of the arrest.

6 (3) Notwithstanding the requirements of the sections referenced  
7 in paragraph (1) of this subdivision, the Department of Justice  
8 shall not disseminate information about an arrest subsequently  
9 deemed a detention or an arrest that resulted in either the successful  
10 completion of a diversion program or exoneration.

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

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

18 (B) Section 11105.3 or 11105.4.

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

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

23 (2) With the exception of applications submitted by  
24 transportation companies authorized pursuant to Section 11105.3,  
25 and notwithstanding any other provision of law, whenever state  
26 summary criminal history information is furnished pursuant to  
27 paragraph (1), the Department of Justice shall disseminate the  
28 following information:

29 (A) Every conviction rendered against the applicant for a  
30 violation or attempted violation of any offense specified in  
31 subdivision (a) of Section 15660 of the Welfare and Institutions  
32 Code. However, with the exception of those offenses for which  
33 registration is required pursuant to Section 290, the Department  
34 of Justice shall not disseminate information pursuant to this  
35 subdivision unless the conviction occurred within 10 years of the  
36 date of the agency's request for information or the conviction is  
37 over 10 years old but the subject of the request was incarcerated  
38 within 10 years of the agency's request for information.

39 (B) Every arrest for a violation or attempted violation of an  
40 offense specified in subdivision (a) of Section 15660 of the Welfare

1 and Institutions Code for which the applicant is presently awaiting  
2 trial, whether the applicant is incarcerated or has been released on  
3 bail or on his or her own recognizance pending trial.

4 (o) (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 an  
7 authorized agency or organization pursuant to Section 261 or 777.5  
8 of the Financial Code, or any statute that incorporates the criteria  
9 of either of those sections or this subdivision by reference, and the  
10 information is to be used for employment, licensing, or certification  
11 purposes.

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

16 (A) Every conviction rendered against the applicant for a  
17 violation or attempted violation of any offense specified in Section  
18 777.5 of the Financial Code.

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

24 (p) (1) This subdivision shall apply whenever state or federal  
25 criminal history information is furnished by the Department of  
26 Justice as the result of an application by an agency, organization,  
27 or individual not defined in subdivision (k), (l), (m), (n), or (o), or  
28 by a transportation company authorized pursuant to Section  
29 11105.3, or any statute that incorporates the criteria of that section  
30 or this subdivision by reference, and the information is to be used  
31 for employment, licensing, or certification purposes.

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

36 (A) Every conviction rendered against the applicant.

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

1 (q) All agencies, organizations, or individuals defined in  
2 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the  
3 Department of Justice for subsequent arrest notification pursuant  
4 to Section 11105.2. This subdivision shall not supersede sections  
5 that mandate an agency, organization, or individual to contract  
6 with the Department of Justice for subsequent arrest notification  
7 pursuant to Section 11105.2.

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

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