

AMENDED IN ASSEMBLY AUGUST 30, 2013

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 Section 432.7 of the Labor Code, ~~and to amend Section 11105 of,~~ and to add Section 4852.22 ~~to,~~ to the Penal Code, relating to criminal offenders.

LEGISLATIVE COUNSEL'S DIGEST

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

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 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 432.7 of the Labor Code is amended to
2 read:

3 432.7. (a) No employer, whether a public agency or private
4 individual or corporation, shall ask an applicant for employment
5 to disclose, through any written form or verbally, information
6 concerning an arrest or detention that did not result in conviction,
7 or information concerning a referral to, and participation in, any
8 pretrial or posttrial diversion program, or concerning a conviction
9 that has been judicially dismissed or ordered sealed pursuant to
10 law, including, but not limited to, Sections 1203.4, 1203.4a,
11 1203.45, and 1210.1 of the Penal Code, nor shall any employer
12 seek from any source whatsoever, or utilize, as a factor in
13 determining any condition of employment including hiring,
14 promotion, termination, or any apprenticeship training program
15 or any other training program leading to employment, any record
16 of arrest or detention that did not result in conviction, or any record
17 regarding a referral to, and participation in, any pretrial or posttrial
18 diversion program, or concerning a conviction that has been
19 judicially dismissed or ordered sealed pursuant to law, including,
20 but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1
21 of the Penal Code. As used in this section, a conviction shall
22 include a plea, verdict, or finding of guilt regardless of whether
23 sentence is imposed by the court. Nothing in this section shall
24 prevent an employer from asking an employee or applicant for
25 employment about an arrest for which the employee or applicant
26 is out on bail or on his or her own recognizance pending trial.

27 (b) Nothing in this section shall prohibit the disclosure of the
28 information authorized for release under Sections 13203 and 13300
29 of the Penal Code, to a government agency employing a peace
30 officer. However, the employer shall not determine any condition
31 of employment other than paid administrative leave based solely
32 on an arrest report. The information contained in an arrest report
33 may be used as the starting point for an independent, internal
34 investigation of a peace officer in accordance with Chapter 9.7
35 (commencing with Section 3300) of Division 4 of Title 1 of the
36 Government Code.

37 (c) In any case where a person violates this section, or Article
38 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part

1 4 of the Penal Code, the applicant may bring an action to recover
2 from that person actual damages or two hundred dollars (\$200),
3 whichever is greater, plus costs, and reasonable attorney's fees.
4 An intentional violation of this section shall entitle the applicant
5 to treble actual damages, or five hundred dollars (\$500), whichever
6 is greater, plus costs, and reasonable attorney's fees. An intentional
7 violation of this section is a misdemeanor punishable by a fine not
8 to exceed five hundred dollars (\$500).

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

12 (e) Persons seeking employment or persons already employed
13 as peace officers or persons seeking employment for positions in
14 the Department of Justice or other criminal justice agencies as
15 defined in Section 13101 of the Penal Code are not covered by
16 this section.

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

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

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

26 (g) (1) No peace officer or employee of a law enforcement
27 agency with access to criminal offender record information
28 maintained by a local law enforcement criminal justice agency
29 shall knowingly disclose, with intent to affect a person's
30 employment, any information contained therein pertaining to an
31 arrest or detention or proceeding that did not result in a conviction,
32 including information pertaining to a referral to, and participation
33 in, any pretrial or posttrial diversion program, to any person not
34 authorized by law to receive that information.

35 (2) No other person authorized by law to receive criminal
36 offender record information maintained by a local law enforcement
37 criminal justice agency shall knowingly disclose any information
38 received therefrom pertaining to an arrest or detention or
39 proceeding that did not result in a conviction, including information
40 pertaining to a referral to, and participation in, any pretrial or

1 posttrial diversion program, to any person not authorized by law
2 to receive that information.

3 (3) No person, except those specifically referred to in Section
4 1070 of the Evidence Code, who knowing he or she is not
5 authorized by law to receive or possess criminal justice records
6 information maintained by a local law enforcement criminal justice
7 agency, pertaining to an arrest or other proceeding that did not
8 result in a conviction, including information pertaining to a referral
9 to, and participation in, any pretrial or posttrial diversion program,
10 shall receive or possess that information.

11 (h) “A person authorized by law to receive that information,”
12 for purposes of this section, means any person or public agency
13 authorized by a court, statute, or decisional law to receive
14 information contained in criminal offender records maintained by
15 a local law enforcement criminal justice agency, and includes, but
16 is not limited to, those persons set forth in Section 11105 of the
17 Penal Code, and any person employed by a law enforcement
18 criminal justice agency who is required by that employment to
19 receive, analyze, or process criminal offender record information.

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

24 (j) As used in this section, “pretrial or posttrial diversion
25 program” means any program under Chapter 2.5 (commencing
26 with Section 1000) or Chapter 2.7 (commencing with Section
27 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
28 13352.5 of the Vehicle Code, or any other program expressly
29 authorized and described by statute as a diversion program.

30 (k) (1) Subdivision (a) shall not apply to any city, city and
31 county, county, or district, or any officer or official thereof, in
32 screening a prospective concessionaire, or the affiliates and
33 associates of a prospective concessionaire for purposes of
34 consenting to, or approving of, the prospective concessionaire’s
35 application for, or acquisition of, any beneficial interest in a
36 concession, lease, or other property interest.

37 (2) For purposes of this subdivision the following terms have
38 the following meanings:

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

1 (B) “Prospective concessionaire” means any individual, general
2 or limited partnership, corporation, trust, association, or other
3 entity that is applying for, or seeking to obtain, a public agency’s
4 consent to, or approval of, the acquisition by that individual or
5 entity of any beneficial ownership interest in any public agency’s
6 concession, lease, or other property right whether directly or
7 indirectly held. However, “prospective concessionaire” does not
8 include any of the following:

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

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

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

17 (D) “Associate” means any individual or entity that shares a
18 common business purpose with the prospective concessionaire
19 with respect to the beneficial ownership interest that is subject to
20 the consent or approval of the city, county, city and county, or
21 district.

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

25 (l) (1) Nothing in subdivision (a) shall prohibit a public agency,
26 or any officer or official thereof, from denying consent to, or
27 approval of, a prospective concessionaire’s application for, or
28 acquisition of, any beneficial interest in a concession, lease, or
29 other property interest based on the criminal history information
30 of the prospective concessionaire or the affiliates or associates of
31 the prospective concessionaire that show any criminal conviction
32 for offenses involving moral turpitude. Criminal history
33 information for purposes of this subdivision includes any criminal
34 history information obtained pursuant to Section 11105 or 13300
35 of the Penal Code.

36 (2) In considering criminal history information, a public agency
37 shall consider the crime for which the prospective concessionaire
38 or the affiliates or associates of the prospective concessionaire was
39 convicted only if that crime relates to the specific business that is
40 proposed to be conducted by the prospective concessionaire.

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

6 (4) (A) If the prospective concessionaire submits a written
7 request to the public agency within 10 days of the date of the notice
8 of denial, the public agency shall review its decision with regard
9 to any corrected record or other evidence presented by the
10 prospective concessionaire as to the accuracy or incompleteness
11 of the criminal history information utilized by the public agency
12 in making its original decision.

13 (B) The prospective concessionaire shall submit the copy or the
14 corrected record of any other evidence to the public agency within
15 90 days of a request for review. The public agency shall render its
16 decision within 20 days of the submission of evidence by the
17 prospective concessionaire.

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

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

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

29 (3) An individual who has been convicted of a crime is
30 prohibited by law from holding the position sought by the
31 applicant, regardless of whether that conviction has been expunged,
32 judicially ordered sealed, statutorily eradicated, or judicially
33 dismissed following probation.

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

36 SEC. 2. Section 4852.22 is added to the Penal Code, to read:

37 4852.22. Except in a case requiring registration pursuant to
38 Section 290, a trial court hearing an application for a certificate
39 of rehabilitation before the applicable period of rehabilitation has

1 elapsed may grant the application if the court, in its discretion,
2 believes relief serves the interests of justice.

3 ~~SEC. 3. Section 11105 of the Penal Code is amended to read:~~

4 ~~11105. (a) (1) The Department of Justice shall maintain state
5 summary criminal history information.~~

6 ~~(2) As used in this section:~~

7 ~~(A) “State summary criminal history information” means the
8 master record of information compiled by the Attorney General
9 pertaining to the identification and criminal history of any person,
10 such as name, date of birth, physical description, fingerprints,
11 photographs, dates of arrests, arresting agencies and booking
12 numbers, charges, dispositions, and similar data about the person.~~

13 ~~(B) “State summary criminal history information” does not refer
14 to records and data compiled by criminal justice agencies other
15 than the Attorney General, nor does it refer to records of complaints
16 to or investigations conducted by, or records of intelligence
17 information or security procedures of, the office of the Attorney
18 General and the Department of Justice.~~

19 ~~(b) The Attorney General shall furnish state summary criminal
20 history information to any of the following, if needed in the course
21 of their duties, provided that when information is furnished to
22 assist an agency, officer, or official of state or local government,
23 a public utility, or any other entity, in fulfilling employment,
24 certification, or licensing duties, Chapter 1321 of the Statutes of
25 1974 and Section 432.7 of the Labor Code shall apply:~~

26 ~~(1) The courts of the state.~~

27 ~~(2) Peace officers of the state, as defined in Section 830.1,
28 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
29 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision
30 (a) of Section 830.31.~~

31 ~~(3) District attorneys of the state.~~

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

33 ~~(5) City attorneys pursuing civil gang injunctions pursuant to
34 Section 186.22a, or drug abatement actions pursuant to Section
35 3479 or 3480 of the Civil Code, or Section 11571 of the Health
36 and Safety Code.~~

37 ~~(6) Probation officers of the state.~~

38 ~~(7) Parole officers of the state.~~

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

4 ~~(9) A public defender or attorney of record when representing~~
5 ~~a person in a criminal case, or a parole, mandatory supervision~~
6 ~~pursuant to paragraph (5) of subdivision (h) of Section 1170, or~~
7 ~~postrelease community supervision revocation or revocation~~
8 ~~extension proceeding, and if authorized access by statutory or~~
9 ~~decisional law.~~

10 ~~(10) Any agency, officer, or official of the state if the criminal~~
11 ~~history information is required to implement a statute or regulation~~
12 ~~that expressly refers to specific criminal conduct applicable to the~~
13 ~~subject person of the state summary criminal history information,~~
14 ~~and contains requirements or exclusions, or both, expressly based~~
15 ~~upon that specified criminal conduct. The agency, officer, or~~
16 ~~official of the state authorized by this paragraph to receive state~~
17 ~~summary criminal history information may also transmit fingerprint~~
18 ~~images and related information to the Department of Justice to be~~
19 ~~transmitted to the Federal Bureau of Investigation.~~

20 ~~(11) Any city or county, city and county, district, or any officer~~
21 ~~or official thereof if access is needed in order to assist that agency,~~
22 ~~officer, or official in fulfilling employment, certification, or~~
23 ~~licensing duties, and if the access is specifically authorized by the~~
24 ~~city council, board of supervisors, or governing board of the city,~~
25 ~~county, or district if the criminal history information is required~~
26 ~~to implement a statute, ordinance, or regulation that expressly~~
27 ~~refers to specific criminal conduct applicable to the subject person~~
28 ~~of the state summary criminal history information, and contains~~
29 ~~requirements or exclusions, or both, expressly based upon that~~
30 ~~specified criminal conduct. The city or county, city and county,~~
31 ~~district, or the officer or official thereof authorized by this~~
32 ~~paragraph may also transmit fingerprint images and related~~
33 ~~information to the Department of Justice to be transmitted to the~~
34 ~~Federal Bureau of Investigation.~~

35 ~~(12) The subject of the state summary criminal history~~
36 ~~information under procedures established under Article 5~~
37 ~~(commencing with Section 11120).~~

38 ~~(13) Any person or entity when access is expressly authorized~~
39 ~~by statute if the criminal history information is required to~~
40 ~~implement a statute or regulation that expressly refers to specific~~

1 ~~criminal conduct applicable to the subject person of the state~~
2 ~~summary criminal history information, and contains requirements~~
3 ~~or exclusions, or both, expressly based upon that specified criminal~~
4 ~~conduct.~~

5 ~~(14) Health officers of a city, county, city and county, or district~~
6 ~~when in the performance of their official duties enforcing Section~~
7 ~~120175 of the Health and Safety Code.~~

8 ~~(15) Any managing or supervising correctional officer of a~~
9 ~~county jail or other county correctional facility.~~

10 ~~(16) Any humane society, or society for the prevention of cruelty~~
11 ~~to animals, for the specific purpose of complying with Section~~
12 ~~14502 of the Corporations Code for the appointment of humane~~
13 ~~officers.~~

14 ~~(17) Local child support agencies established by Section 17304~~
15 ~~of the Family Code. When a local child support agency closes a~~
16 ~~support enforcement case containing summary criminal history~~
17 ~~information, the agency shall delete or purge from the file and~~
18 ~~destroy any documents or information concerning or arising from~~
19 ~~offenses for or of which the parent has been arrested, charged, or~~
20 ~~convicted, other than for offenses related to the parent's having~~
21 ~~failed to provide support for minor children, consistent with the~~
22 ~~requirements of Section 17531 of the Family Code.~~

23 ~~(18) County child welfare agency personnel who have been~~
24 ~~delegated the authority of county probation officers to access state~~
25 ~~summary criminal history information pursuant to Section 272 of~~
26 ~~the Welfare and Institutions Code for the purposes specified in~~
27 ~~Section 16504.5 of the Welfare and Institutions Code. Information~~
28 ~~from criminal history records provided pursuant to this subdivision~~
29 ~~shall not be used for any purposes other than those specified in~~
30 ~~this section and Section 16504.5 of the Welfare and Institutions~~
31 ~~Code. When an agency obtains records obtained both on the basis~~
32 ~~of name checks and fingerprint checks, final placement decisions~~
33 ~~shall be based only on the records obtained pursuant to the~~
34 ~~fingerprint check.~~

35 ~~(19) The court of a tribe, or court of a consortium of tribes, that~~
36 ~~has entered into an agreement with the state pursuant to Section~~
37 ~~10553.1 of the Welfare and Institutions Code. This information~~
38 ~~may be used only for the purposes specified in Section 16504.5~~
39 ~~of the Welfare and Institutions Code and for tribal approval or~~
40 ~~tribal licensing of foster care or adoptive homes. Article 6~~

1 ~~(commencing with Section 11140) shall apply to officers, members,~~
2 ~~and employees of a tribal court receiving criminal record offender~~
3 ~~information pursuant to this section.~~

4 ~~(20) Child welfare agency personnel of a tribe or consortium~~
5 ~~of tribes that has entered into an agreement with the state pursuant~~
6 ~~to Section 10553.1 of the Welfare and Institutions Code and to~~
7 ~~whom the state has delegated duties under paragraph (2) of~~
8 ~~subdivision (a) of Section 272 of the Welfare and Institutions Code.~~

9 ~~The purposes for use of the information shall be for the purposes~~
10 ~~specified in Section 16504.5 of the Welfare and Institutions Code~~
11 ~~and for tribal approval or tribal licensing of foster care or adoptive~~
12 ~~homes. When an agency obtains records on the basis of name~~
13 ~~checks and fingerprint checks, final placement decisions shall be~~
14 ~~based only on the records obtained pursuant to the fingerprint~~
15 ~~check. Article 6 (commencing with Section 11140) shall apply to~~
16 ~~child welfare agency personnel receiving criminal record offender~~
17 ~~information pursuant to this section.~~

18 ~~(21) An officer providing conservatorship investigations~~
19 ~~pursuant to Sections 5351, 5354, and 5356 of the Welfare and~~
20 ~~Institutions Code.~~

21 ~~(22) A court investigator providing investigations or reviews~~
22 ~~in conservatorships pursuant to Section 1826, 1850, 1851, or~~
23 ~~2250.6 of the Probate Code.~~

24 ~~(23) A person authorized to conduct a guardianship investigation~~
25 ~~pursuant to Section 1513 of the Probate Code.~~

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

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

37 ~~(1) Any public utility, as defined in Section 216 of the Public~~
38 ~~Utilities Code, that operates a nuclear energy facility when access~~
39 ~~is needed in order to assist in employing persons to work at the~~
40 ~~facility, provided that, if the Attorney General supplies the data,~~

1 he or she shall furnish a copy of the data to the person to whom
2 the data relates.

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

5 ~~(3) To an illegal dumping enforcement officer as defined in~~
6 ~~subdivision (j) of Section 830.7.~~

7 ~~(4) To a peace officer of another country.~~

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

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

19 ~~(7) The courts of the United States, other states, or territories~~
20 ~~or possessions of the United States.~~

21 ~~(8) Peace officers of the United States, other states, or territories~~
22 ~~or possessions of the United States.~~

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

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

36 ~~(ii) If the Attorney General supplies the data pursuant to this~~
37 ~~paragraph, the Attorney General shall furnish a copy of the data~~
38 ~~to the current or prospective employee to whom the data relates.~~

39 ~~(iii) Any information obtained from the state summary criminal~~
40 ~~history is confidential and the receiving public utility or cable~~

1 ~~corporation shall not disclose its contents, other than for the~~
2 ~~purpose for which it was acquired. The state summary criminal~~
3 ~~history information in the possession of the public utility or cable~~
4 ~~corporation and all copies made from it shall be destroyed not~~
5 ~~more than 30 days after employment or promotion or transfer is~~
6 ~~denied or granted, except for those cases where a current or~~
7 ~~prospective employee is out on bail or on his or her own~~
8 ~~recognizance pending trial, in which case the state summary~~
9 ~~criminal history information and all copies shall be destroyed not~~
10 ~~more than 30 days after the case is resolved.~~

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

21 ~~(v) Nothing in this section shall be construed as imposing any~~
22 ~~duty upon public utilities or cable corporations to request state~~
23 ~~summary criminal history information on any current or prospective~~
24 ~~employees.~~

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

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

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

1 (ii) ~~Authority for a public utility to request federal level criminal~~
2 ~~history information under this paragraph shall commence July 1,~~
3 ~~2005.~~

4 (11) ~~To any campus of the California State University or the~~
5 ~~University of California, or any four year college or university~~
6 ~~accredited by a regional accreditation organization approved by~~
7 ~~the United States Department of Education, if needed in~~
8 ~~conjunction with an application for admission by a convicted felon~~
9 ~~to any special education program for convicted felons, including,~~
10 ~~but not limited to, university alternatives and halfway houses. Only~~
11 ~~conviction information shall be furnished. The college or university~~
12 ~~may require the convicted felon to be fingerprinted, and any inquiry~~
13 ~~to the department under this section shall include the convicted~~
14 ~~felon's fingerprints and any other information specified by the~~
15 ~~department.~~

16 (12) ~~To any foreign government, if requested by the individual~~
17 ~~who is the subject of the record requested, if needed in conjunction~~
18 ~~with the individual's application to adopt a minor child who is a~~
19 ~~citizen of that foreign nation. Requests for information pursuant~~
20 ~~to this paragraph shall be in accordance with the process described~~
21 ~~in Sections 11122 to 11124, inclusive. The response shall be~~
22 ~~provided to the foreign government or its designee and to the~~
23 ~~individual who requested the information.~~

24 (d) ~~Whenever an authorized request for state summary criminal~~
25 ~~history information pertains to a person whose fingerprints are on~~
26 ~~file with the Department of Justice and the department has no~~
27 ~~criminal history of that person, and the information is to be used~~
28 ~~for employment, licensing, or certification purposes, the fingerprint~~
29 ~~card accompanying the request for information, if any, may be~~
30 ~~stamped "no criminal record" and returned to the person or entity~~
31 ~~making the request.~~

32 (e) ~~Whenever state summary criminal history information is~~
33 ~~furnished as the result of an application and is to be used for~~
34 ~~employment, licensing, or certification purposes, the Department~~
35 ~~of Justice may charge the person or entity making the request a~~
36 ~~fee that it determines to be sufficient to reimburse the department~~
37 ~~for the cost of furnishing the information. In addition, the~~
38 ~~Department of Justice may add a surcharge to the fee to fund~~
39 ~~maintenance and improvements to the systems from which the~~
40 ~~information is obtained. Notwithstanding any other law, any person~~

1 or entity required to pay a fee to the department for information
2 received under this section may charge the applicant a fee sufficient
3 to reimburse the person or entity for this expense. All moneys
4 received by the department pursuant to this section, Sections
5 11105.3 and 26190, and former Section 13588 of the Education
6 Code shall be deposited in a special account in the General Fund
7 to be available for expenditure by the department to offset costs
8 incurred pursuant to those sections and for maintenance and
9 improvements to the systems from which the information is
10 obtained upon appropriation by the Legislature.

11 (f) Whenever there is a conflict, the processing of criminal
12 fingerprints and fingerprints of applicants for security guard or
13 alarm agent registrations or firearms qualification permits
14 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
15 of the Business and Professions Code shall take priority over the
16 processing of other applicant fingerprints.

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

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

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

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

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

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

5 ~~(A) Every conviction rendered against the applicant.~~

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

10 ~~(C) Every arrest or detention, except for an arrest or detention~~
11 ~~resulting in an exoneration, provided however that where the~~
12 ~~records of the Department of Justice do not contain a disposition~~
13 ~~for the arrest, the Department of Justice first makes a genuine effort~~
14 ~~to determine the disposition of the arrest.~~

15 ~~(D) Every successful diversion.~~

16 ~~(E) Every date and agency name associated with all retained~~
17 ~~peace officer or nonsworn law enforcement agency employee~~
18 ~~preemployment criminal offender record information search~~
19 ~~requests.~~

20 ~~(f) (1) This subdivision shall apply whenever state or federal~~
21 ~~summary criminal history information is furnished by the~~
22 ~~Department of Justice as the result of an application by a criminal~~
23 ~~justice agency or organization as defined in Section 13101, and~~
24 ~~the information is to be used for criminal justice employment,~~
25 ~~licensing, or certification purposes.~~

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

30 ~~(A) Every conviction rendered against the applicant.~~

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

35 ~~(C) Every arrest for an offense for which the records of the~~
36 ~~Department of Justice do not contain a disposition or did not result~~
37 ~~in a conviction, provided that the Department of Justice first makes~~
38 ~~a genuine effort to determine the disposition of the arrest. However,~~
39 ~~information concerning an arrest shall not be disclosed if the~~
40 ~~records of the Department of Justice indicate or if the genuine~~

1 ~~effort reveals that the subject was exonerated, successfully~~
2 ~~completed a diversion or deferred entry of judgment program, or~~
3 ~~the arrest was deemed a detention.~~

4 ~~(D) 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 ~~(m) (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 an~~
11 ~~authorized agency or organization pursuant to Section 1522,~~
12 ~~1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or~~
13 ~~any statute that incorporates the criteria of any of those sections~~
14 ~~or this subdivision by reference, and the information is to be used~~
15 ~~for employment, licensing, or certification purposes.~~

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

20 ~~(A) Every conviction of an offense rendered against the~~
21 ~~applicant, except a conviction for which the applicant has been~~
22 ~~granted relief pursuant to Section 1203.4, 1203.4a, 1203.45, or~~
23 ~~1210.1.~~

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

28 ~~(C) Every arrest for an offense for which the Department of~~
29 ~~Social Services is required by paragraph (1) of subdivision (a) of~~
30 ~~Section 1522 of the Health and Safety Code to determine if an~~
31 ~~applicant has been arrested. However, if the records of the~~
32 ~~Department of Justice do not contain a disposition for an arrest,~~
33 ~~the Department of Justice shall first make a genuine effort to~~
34 ~~determine the disposition of the arrest.~~

35 ~~(3) Notwithstanding the requirements of the sections referenced~~
36 ~~in paragraph (1) of this subdivision, the Department of Justice~~
37 ~~shall not disseminate information about an arrest subsequently~~
38 ~~deemed a detention or an arrest that resulted in either the successful~~
39 ~~completion of a diversion program or exoneration.~~

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

6 ~~(A) Paragraph (9) of subdivision (e), when the information is~~
7 ~~to be used by a cable corporation.~~

8 ~~(B) Section 11105.3 or 11105.4.~~

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

10 ~~(D) Any statute that incorporates the criteria of any of the~~
11 ~~statutory provisions listed in subparagraph (A), (B), or (C), or of~~
12 ~~this subdivision, by reference.~~

13 ~~(2) With the exception of applications submitted by~~
14 ~~transportation companies authorized pursuant to Section 11105.3,~~
15 ~~and notwithstanding any other provision of law, whenever state~~
16 ~~summary criminal history information is initially furnished~~
17 ~~pursuant to paragraph (1), the Department of Justice shall~~
18 ~~disseminate the following information:~~

19 ~~(A) Every conviction rendered against the applicant for a~~
20 ~~violation or attempted violation of any offense specified in~~
21 ~~subdivision (a) of Section 15660 of the Welfare and Institutions~~
22 ~~Code, except a conviction for which the applicant has been granted~~
23 ~~relief pursuant to Section 1203.4, 1203.4a, 1203.45, or 1210.1.~~
24 ~~However, with the exception of those offenses for which~~
25 ~~registration is required pursuant to Section 290, the Department~~
26 ~~of Justice shall not disseminate information pursuant to this~~
27 ~~subdivision unless the conviction occurred within 10 years of the~~
28 ~~date of the agency's request for information or the conviction is~~
29 ~~over 10 years old but the subject of the request was incarcerated~~
30 ~~within 10 years of the agency's request for information.~~

31 ~~(B) Every arrest for a violation or attempted violation of an~~
32 ~~offense specified in subdivision (a) of Section 15660 of the Welfare~~
33 ~~and Institutions Code for which the applicant is presently awaiting~~
34 ~~trial, whether the applicant is incarcerated or has been released on~~
35 ~~bail or on his or her own recognizance pending trial.~~

36 ~~(o) (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 379 or 550~~
40 ~~of the Financial Code, or any statute that incorporates the criteria~~

1 of either of those sections or this subdivision by reference, and the
2 information is to be used for employment, licensing, or certification
3 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 rendered against the applicant for a
9 violation or attempted violation of any offense specified in Section
10 550 of the Financial Code, except a conviction for which the
11 applicant has been granted relief pursuant to Section 1203.4,
12 1203.4a, 1203.45, or 1210.1.

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

18 (p) (1) This subdivision shall apply whenever state or federal
19 criminal history information is furnished by the Department of
20 Justice as the result of an application by an agency, organization,
21 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
22 by a transportation company authorized pursuant to Section
23 11105.3, or any statute that incorporates the criteria of that section
24 or this subdivision by reference, and the information is to be used
25 for employment, licensing, or certification purposes:

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

30 (A) Every conviction rendered against the applicant, except a
31 conviction for which the applicant has been granted relief pursuant
32 to Section 1203.4, 1203.4a, 1203.45, or 1210.1.

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 (q) All agencies, organizations, or individuals defined in
38 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
39 Department of Justice for subsequent notification pursuant to
40 Section 11105.2. This subdivision shall not supersede sections that

1 ~~mandate an agency, organization, or individual to contract with~~
2 ~~the Department of Justice for subsequent notification pursuant to~~
3 ~~Section 11105.2.~~

4 (r) ~~Nothing in this section shall be construed to mean that the~~
5 ~~Department of Justice shall cease compliance with any other~~
6 ~~statutory notification requirements.~~

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

10 (t) ~~Whenever state or federal summary criminal history~~
11 ~~information is furnished by the Department of Justice as the result~~
12 ~~of an application by an authorized agency, organization, or~~
13 ~~individual defined in subdivisions (k) to (p), inclusive, and the~~
14 ~~information is to be used for employment, licensing, or certification~~
15 ~~purposes, the authorized agency, organization, or individual shall~~
16 ~~expeditiously furnish a copy of the information to the person to~~
17 ~~whom the information relates if the information is a basis for an~~
18 ~~adverse employment, licensing, or certification decision. When~~
19 ~~furnished other than in person, the copy shall be delivered to the~~
20 ~~last contact information provided by the applicant.~~

21 ~~SEC. 4.~~

22 *SEC. 3.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.