

ASSEMBLY BILL

No. 1762

**Introduced by Assembly Member Campos
(Principal coauthors: Assembly Members Santiago and Weber)**

February 2, 2016

An act to amend Sections 8712, 8811, and 8908 of the Family Code, and to amend Sections 236.1 and 11105 of, to repeal Section 1203.49, and to add Sections 236.24 and 236.25 to, the Penal Code, and relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1762, as introduced, Campos. Human trafficking: victims: vacating convictions.

(1) Under existing law, as amended by Proposition 35, an initiative measure approved by the voters at the November 6, 2012, statewide general election, a person who deprives or violate another person's personal liberty with the intent to obtain forced labor or services or who deprives or violates another person's personal liberty for the purpose of prostitution or sexual exploitation is guilty of human trafficking, a felony. Proposition 35 provides that it may be amended by a statute in furtherance of its objectives by a majority of the membership of each house of the Legislature concurring.

Existing law allows a court to issue an order to set aside a verdict of guilty and dismiss an accusation or information against a defendant who has been convicted of solicitation or prostitution if the defendant has completed any term of probation for that conviction and if he or she can establish by clear and convincing evidence that the conviction was a result of his or her status as a victim of human trafficking.

This bill would instead allow an individual convicted of a nonviolent crime while he or she was human trafficking victim to apply to the court to vacate the conviction at any time after it was entered. The bill would allow an individual adjudicated a ward of the juvenile court as the result of a nonviolent crime committed while he or she was a human trafficking victim to apply to have the petition dismissed. If the application is granted, the bill would require court to have all records in the case sealed and to release the defendant from all penalties and disabilities, as provided. The bill would define “human trafficking victim” and “nonviolent crime” for these purposes.

The bill would allow the defendant applying for vacatur to submit evidence containing personal identify information under seal along with a statement under penalty of perjury confirming his or her identity. By expanding the crime of perjury, this bill would impose a state-mandated local program.

(2) Existing law requires the Attorney General to compile and disseminate state summary criminal history information pertaining to the identification and criminal history of any person.

This bill would require the state summary criminal history information to exclude any charge or conviction for which relief has been granted pursuant to the provisions of this bill.

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

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

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

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

1 SECTION 1. Section 8712 of the Family Code is amended to
2 read:
3 8712. (a) The department, county adoption agency, or licensed
4 adoption agency shall require each person who files an application
5 for adoption to be fingerprinted and shall secure from an
6 appropriate law enforcement agency any criminal record of that
7 person to determine whether the person has ever been convicted
8 of a crime other than a minor traffic violation. The department,
9 county adoption agency, or licensed adoption agency may also

1 secure the person's full criminal record, if any, with the exception
2 of any convictions for which relief has been granted pursuant to
3 Section 1203.49 of the Penal Code. *any.* Any federal-level criminal
4 offender record requests to the Department of Justice shall be
5 submitted with fingerprint images and related information required
6 by the Department of Justice for the purposes of obtaining
7 information as to the existence and content of a record of an
8 out-of-state or federal conviction or arrest of a person or
9 information regarding any out-of-state or federal crimes or arrests
10 for which the Department of Justice establishes that the person is
11 free on bail, or on his or her own recognizance pending trial or
12 appeal. The Department of Justice shall forward to the Federal
13 Bureau of Investigation any requests for federal summary criminal
14 history information received pursuant to this section. The
15 Department of Justice shall review the information returned from
16 the Federal Bureau of Investigation and shall compile and
17 disseminate a response to the department, county adoption agency,
18 or licensed adoption agency.

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

25 (c) (1) The department, county adoption agency, or licensed
26 adoption agency shall not give final approval for an adoptive
27 placement in any home in which the prospective adoptive parent
28 or any adult living in the prospective adoptive home has either of
29 the following:

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

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

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

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

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

16 8811. (a) The department or delegated county adoption agency
17 shall require each person who files an adoption petition to be
18 fingerprinted and shall secure from an appropriate law enforcement
19 agency any criminal record of that person to determine whether
20 the person has ever been convicted of a crime other than a minor
21 traffic violation. The department or delegated county adoption
22 agency may also secure the person's full criminal record, if any,
23 ~~with the exception of any convictions for which relief has been~~
24 ~~granted pursuant to Section 1203.49 of the Penal Code.~~ any. Any
25 federal-level criminal offender record requests to the Department
26 of Justice shall be submitted with fingerprint images and related
27 information required by the Department of Justice for the purposes
28 of obtaining information as to the existence and content of a record
29 of an out-of-state or federal conviction or arrest of a person or
30 information regarding any out-of-state or federal crimes or arrests
31 for which the Department of Justice establishes that the person is
32 free on bail, or on his or her own recognizance pending trial or
33 appeal. The Department of Justice shall forward to the Federal
34 Bureau of Investigation any requests for federal summary criminal
35 history information received pursuant to this section. The
36 Department of Justice shall review the information returned from
37 the Federal Bureau of Investigation and shall compile and
38 disseminate a response to the department or delegated county
39 adoption agency.

1 (b) Notwithstanding subdivision (c), the criminal record, if any,
2 shall be taken into consideration when evaluating the prospective
3 adoptive parent, and an assessment of the effects of any criminal
4 history on the ability of the prospective adoptive parent to provide
5 adequate and proper care and guidance to the child shall be
6 included in the report to the court.

7 (c) (1) The department or a delegated county adoption agency
8 shall not give final approval for an adoptive placement in any home
9 in which the prospective adoptive parent or any adult living in the
10 prospective adoptive home has either of the following:

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

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

21 (2) This subdivision shall become operative on October 1, 2008,
22 and shall remain operative only to the extent that compliance with
23 its provisions is required by federal law as a condition of receiving
24 funding under Title IV-E of the federal Social Security Act (42
25 U.S.C. 670 et seq.).

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

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

36 8908. (a) A licensed adoption agency shall require each person
37 filing an application for adoption to be fingerprinted and shall
38 secure from an appropriate law enforcement agency any criminal
39 record of that person to determine whether the person has ever
40 been convicted of a crime other than a minor traffic violation. The

1 licensed adoption agency may also secure the person's full criminal
2 record, ~~if any, with the exception of any convictions for which~~
3 ~~relief has been granted pursuant to Section 1203.49 of the Penal~~
4 ~~Code.~~ *any.* Any federal-level criminal offender record requests to
5 the Department of Justice shall be submitted with fingerprint
6 images and related information required by the Department of
7 Justice for the purposes of obtaining information as to the existence
8 and content of a record of an out-of-state or federal conviction or
9 arrest of a person or information regarding any out-of-state or
10 federal crimes or arrests for which the Department of Justice
11 establishes that the person is free on bail, or on his or her own
12 recognizance pending trial or appeal. The Department of Justice
13 shall forward to the Federal Bureau of Investigation any requests
14 for federal summary criminal history information received pursuant
15 to this section. The Department of Justice shall review the
16 information returned from the Federal Bureau of Investigation and
17 shall compile and disseminate a fitness determination to the
18 licensed adoption agency.

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

25 (c) (1) A licensed adoption agency shall not give final approval
26 for an adoptive placement in any home in which the prospective
27 adoptive parent, or any adult living in the prospective adoptive
28 home, has a felony conviction for either of the following:

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

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

39 (2) This subdivision shall become operative on October 1, 2008,
40 and shall remain operative only to the extent that compliance with

1 its provisions is required by federal law as a condition of receiving
2 funding under Title IV-E of the federal Social Security Act (42
3 U.S.C. 670 et seq.).

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

10 SEC. 4. Section 236.1 of the Penal Code is amended to read:

11 236.1. (a) ~~Any~~A person who deprives or violates the personal
12 liberty of another with the intent to obtain forced labor or services,
13 is guilty of human trafficking and shall be punished by
14 imprisonment in the state prison for 5, 8, or 12 years and a fine of
15 not more than five hundred thousand dollars (\$500,000).

16 (b) ~~Any~~A person who deprives or violates the personal liberty
17 of another with the intent to effect or maintain a violation of
18 Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4,
19 311.5, 311.6, or 518 is guilty of human trafficking and shall be
20 punished by imprisonment in the state prison for 8, 14, or 20 years
21 and a fine of not more than five hundred thousand dollars
22 (\$500,000).

23 (c) ~~Any~~A person who causes, induces, or persuades, or attempts
24 to cause, induce, or persuade, a person who is a minor at the time
25 of commission of the offense to engage in a commercial sex act,
26 with the intent to effect or maintain a violation of Section 266,
27 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or
28 518 is guilty of human trafficking. A violation of this subdivision
29 is punishable by imprisonment in the state prison as follows:

30 (1) Five, 8, or 12 years and a fine of not more than five hundred
31 thousand dollars (\$500,000).

32 (2) Fifteen years to life and a fine of not more than five hundred
33 thousand dollars (\$500,000) when the offense involves force, fear,
34 fraud, deceit, coercion, violence, duress, menace, or threat of
35 unlawful injury to the victim or to another person.

36 (d) In determining whether a minor was caused, induced, or
37 persuaded to engage in a commercial sex act, the totality of the
38 circumstances, including the age of the victim, his or her
39 relationship to the trafficker or agents of the trafficker, and any
40 handicap or disability of the victim, shall be considered.

1 (e) Consent by a victim of human trafficking who is a minor at
2 the time of the commission of the offense is not a defense to a
3 criminal prosecution under this section.

4 (f) Mistake of fact as to the age of a victim of human trafficking
5 who is a minor at the time of the commission of the offense is not
6 a defense to a criminal prosecution under this section.

7 (g) The Legislature finds that the definition of human trafficking
8 in this section is equivalent to the federal definition of a severe
9 form of trafficking found in Section ~~7102(8)~~ 7102(9) of Title 22
10 of the United States Code.

11 (h) For purposes of this chapter, the following definitions apply:

12 (1) “Coercion” includes ~~any~~ a scheme, plan, or pattern intended
13 to cause a person to believe that failure to perform an act would
14 result in serious harm to or physical restraint against any person;
15 the abuse or threatened abuse of the legal process; debt bondage;
16 or providing and facilitating the possession of ~~any~~ a controlled
17 substance to a person with the intent to impair the person’s
18 judgment.

19 (2) “Commercial sex act” means sexual conduct on account of
20 which anything of value is given or received by ~~any~~ a person.

21 (3) “Deprivation or violation of the personal liberty of another”
22 includes substantial and sustained restriction of another’s liberty
23 accomplished through force, fear, fraud, deceit, coercion, violence,
24 duress, menace, or threat of unlawful injury to the victim or to
25 another person, under circumstances where the person receiving
26 or apprehending the threat reasonably believes that it is likely that
27 the person making the threat would carry it out.

28 (4) “Duress” includes a direct or implied threat of force,
29 violence, danger, hardship, or retribution sufficient to cause a
30 reasonable person to acquiesce in or perform an act which he or
31 she would otherwise not have submitted to or performed; a direct
32 or implied threat to destroy, conceal, remove, confiscate, or possess
33 ~~any~~ an actual or purported passport or immigration document of
34 the victim; or knowingly destroying, concealing, removing,
35 confiscating, or possessing ~~any~~ an actual or purported passport or
36 immigration document of the victim.

37 (5) “Forced labor or services” means labor or services that are
38 performed or provided by a person and are obtained or maintained
39 through force, fraud, duress, or coercion, or equivalent conduct
40 that would reasonably overbear the will of the person.

1 (6) “Great bodily injury” means a significant or substantial
2 physical injury.

3 (7) “*Human trafficking victim*” means a person who is a victim
4 of any of the acts described in subdivision (a), (b), or (c).

5 ~~(7)~~

6 (8) “Minor” means a person less than 18 years of age.

7 ~~(8)~~

8 (9) “Serious harm” includes any harm, whether physical or
9 nonphysical, including psychological, financial, or reputational
10 harm, that is sufficiently serious, under all the surrounding
11 circumstances, to compel a reasonable person of the same
12 background and in the same circumstances to perform or to
13 continue performing labor, services, or commercial sexual acts in
14 order to avoid incurring that harm.

15 (10) “*Nonviolent crime*” means any crime or offense other than
16 murder, attempted murder, voluntary manslaughter, mayhem,
17 kidnaping, rape, robbery, arson, carjacking, or any other violent
18 felony as defined in subdivision (c) of Section 667.5.

19 (i) The total circumstances, including the age of the victim, the
20 relationship between the victim and the trafficker or agents of the
21 trafficker, and any handicap or disability of the victim, shall be
22 factors to consider in determining the presence of “deprivation or
23 violation of the personal liberty of another,” “duress,” and
24 “coercion” as described in this section.

25 SEC. 5. Section 236.24 is added to the Penal Code, to read:

26 236.24. (a) An individual convicted of a nonviolent crime
27 committed while that individual was a human trafficking victim
28 may apply to the court in which the conviction was entered to
29 vacate the conviction at any time after it is entered. The court shall
30 grant the application on a finding that the applicant’s participation
31 in the offense on which the applicant was convicted was a direct
32 result of the applicant being a human trafficking victim.

33 (b) Subject to subdivision (c), the application shall identify the
34 applicant, the offense for which vacatur is sought, and the court
35 in which the conviction was entered. The applicant shall describe
36 in the application all the available grounds and evidence for vacatur
37 of the conviction known to the applicant.

38 (c) To maintain the confidentiality of the applicant’s status as
39 a human trafficking victim, the application may be filed identifying
40 the applicant by initials in any publicly available filing relating to

1 the application. The applicant shall submit all evidence supporting
2 the application that contains personal identifying information to
3 the court under seal along with a statement under penalty of perjury
4 confirming his or her identity.

5 (d) The application and all supporting evidence, including,
6 without limitation, the identity statement and evidence submitted
7 under seal, shall be served on the state or local prosecutorial agency
8 that obtained the conviction for which the applicant seeks vacatur.
9 The state or local prosecutorial agency shall have 30 days for the
10 date of receipt of service to oppose the application.

11 (e) If opposition to the application is not filed by the applicable
12 state or local prosecutorial agency, the court shall deem the
13 application unopposed and shall grant the application. If the
14 application is opposed, the court shall hold a hearing on the
15 application.

16 (f) If the court finds that the applicant's participation in the
17 offense on which the conviction was based was a direct result of
18 the applicant being a victim of human trafficking, the court shall
19 grant the application and vacate the conviction, strike the
20 adjudication of guilt, and order the relief specified in Section
21 236.25 and may also take additional action and grant additional
22 relief as it deems appropriate under the circumstances.

23 (g) If the court denies the application because the evidence is
24 insufficient to establish grounds for vacatur, the denial shall be
25 without prejudice. The court shall state the reasons for its denial
26 in writing and, if those reasons are based on curable deficiencies
27 in the application, allow the applicant a reasonable time period to
28 cure the deficiencies upon which the court based the denial.

29 (h) An individual determined to be a ward of the juvenile court
30 in a proceeding pursuant to Section 602 of the Welfare and
31 Institutions Code as a result of a nonviolent crime committed while
32 that individual was a human trafficking victim may apply to the
33 juvenile court that made that determination to have the
34 determination set aside at any time after it was made. The court
35 shall grant the application on a finding that the applicant's
36 participation in the offense on the proceeding was a direct result
37 of the applicant being a human trafficking victim. Upon making
38 the finding, the court shall order the relief prescribed in Section
39 786 of the Welfare and Institutions Code.

1 (i) In making a determination on an application under either
2 subdivision (a) or (h), the court may consider any evidence it deems
3 of sufficient credibility and probative value, including the sworn
4 statement of the applicant. The statement, alone, is sufficient
5 evidence to support the vacating of a conviction, provided the court
6 finds that the statement is credible. Evidence in support of granting
7 an application may also include, but is not limited to, all of the
8 following:

9 (1) Certified records of a federal, state, tribal or local court or
10 governmental agency documenting the person's status as a victim
11 of human trafficking at the time of the offense, including
12 identification of a victim of human trafficking by a peace officer
13 pursuant to Section 236.2 and certified records of approval notices
14 or enforcement certifications generated from federal immigration
15 proceedings, create a rebuttable presumption that an offense was
16 committed by the defendant as a direct result of being a human
17 trafficking victim.

18 (2) A sworn statement from a trained professional staff member
19 of a victim services organization, an attorney, a member of the
20 clergy, or a medical or other professional from whom the defendant
21 has sought assistance in addressing the trauma associated with
22 being trafficked.

23 (j) The court shall grant an application made under subdivision
24 (a) or (h) if the conviction or adjudication was based on a crime
25 constituting or arising from a commercial sex act, including
26 violation of subdivision (b) of Section 647 or Section 653.22, upon
27 a finding that the applicant was under the age of 18 years at the
28 time of the offense on which the conviction is based.

29 (k) This section and the rights and remedies granted to victims
30 of human trafficking hereunder apply to any conviction entered
31 or adjudication made prior to or after January 1, 2017

32 SEC. 6. Section 236.25 is added to the Penal Code, to read:

33 236.25. (a) For any charge, adjudication or conviction for
34 which a human trafficking victim was granted relief under Section
35 236.24 of the Penal Code, the court shall order that all records in
36 the case be sealed pursuant to Section 851.86 and shall grant the
37 relief provided in subdivision (b) of Section 851.8.

38 (b) The human trafficking victim shall be released from all
39 penalties and disabilities resulting from the charge, adjudication
40 or conviction, and all actions and proceedings by law enforcement

1 personnel, courts or other government employees that led to the
2 charge, adjudication or conviction shall be deemed not to have
3 occurred.

4 (c) All of the following shall apply to a human trafficking victim
5 granted relief pursuant to Section 236.24, or under any substantially
6 equivalent statute of another jurisdiction:

7 (1) The human trafficking victim may in all circumstances state
8 that he or she has never been arrested for, charged with or convicted
9 of the crime that is the subject of the charge, adjudication or
10 conviction, including without limitation in response to questions
11 on employment, housing, financial aid or loan applications.

12 (2) The human trafficking victim may not be denied rights or
13 benefits, including, without limitation, employment, housing,
14 financial aid, welfare, or a loan or other financial accommodation,
15 based on the arrest, charge, adjudication or conviction or the
16 victim’s failure or refusal to disclose the existence of or information
17 concerning those events.

18 (3) The human trafficking victim may not be thereafter charged
19 or convicted of perjury or otherwise of giving a false statement by
20 reason of having failed to disclose or acknowledge the existence
21 of the charge, adjudication or conviction, or any arrest, charge,
22 indictment, trial or other proceedings related thereto.

23 SEC. 7. Section 1203.49 of the Penal Code is repealed.

24 ~~1203.49. If a defendant has been convicted of solicitation or~~
25 ~~prostitution, as described in subdivision (b) of Section 647, and if~~
26 ~~the defendant has completed any term of probation for that~~
27 ~~conviction, the defendant may petition the court for relief under~~
28 ~~this section. If the defendant can establish by clear and convincing~~
29 ~~evidence that the conviction was the result of his or her status as~~
30 ~~a victim of human trafficking, the court may issue an order that~~
31 ~~does all of the following:~~

32 ~~(a) Sets forth a finding that the petitioner was a victim of human~~
33 ~~trafficking when he or she committed the crime.~~

34 ~~(b) Orders any of the relief described in Section 1203.4.~~

35 ~~(c) Notifies the Department of Justice that the petitioner was a~~
36 ~~victim of human trafficking when he or she committed the crime~~
37 ~~and the relief that has been ordered.~~

38 SEC. 8. Section 11105 of the Penal Code is amended to read:

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

1 (2) As used in this section:

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

8 (B) “State summary criminal history information” does not refer
9 to records and data compiled by criminal justice agencies other
10 than the Attorney General, nor does it refer to records of complaints
11 to or investigations conducted by, or records of intelligence
12 information or security procedures of, the office of the Attorney
13 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 course
16 of their duties, provided that when information is furnished to
17 assist an agency, officer, or official of state or local government,
18 a public utility, or any other entity, in fulfilling employment,
19 certification, or licensing duties, Chapter 1321 of the Statutes of
20 1974 and Section 432.7 of the Labor Code shall apply:

21 (1) The courts of the state.

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

26 (3) District attorneys of the state.

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

28 (5) City attorneys pursuing civil gang injunctions pursuant to
29 Section 186.22a, or drug abatement actions pursuant to Section
30 3479 or 3480 of the Civil Code, or Section 11571 of the Health
31 and Safety Code.

32 (6) Probation officers of the state.

33 (7) Parole officers of the state.

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

37 (9) A public defender or attorney of record when representing
38 a person in a criminal case, or a parole, mandatory supervision
39 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
40 postrelease community supervision revocation or revocation

1 extension proceeding, and if authorized access by statutory or
2 decisional law.

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

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

28 (12) The subject of the state summary criminal history
29 information under procedures established under Article 5
30 (commencing with Section 11120).

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

38 (14) Health officers of a city, county, city and county, or district
39 when in the performance of their official duties enforcing Section
40 120175 of the Health and Safety Code.

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

3 (16) Any humane society, or society for the prevention of cruelty
4 to animals, for the specific purpose of complying with Section
5 14502 of the Corporations Code for the appointment of humane
6 officers.

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

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

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

37 (20) Child welfare agency personnel of a tribe or consortium
38 of tribes that has entered into an agreement with the state pursuant
39 to Section 10553.1 of the Welfare and Institutions Code and to
40 whom the state has delegated duties under paragraph (2) of

1 subdivision (a) of Section 272 of the Welfare and Institutions Code.
2 The purposes for use of the information shall be for the purposes
3 specified in Section 16504.5 of the Welfare and Institutions Code
4 and for tribal approval or tribal licensing of foster care or adoptive
5 homes. When an agency obtains records on the basis of name
6 checks and fingerprint checks, final placement decisions shall be
7 based only on the records obtained pursuant to the fingerprint
8 check. Article 6 (commencing with Section 11140) shall apply to
9 child welfare agency personnel receiving criminal record offender
10 information pursuant to this section.

11 (21) An officer providing conservatorship investigations
12 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
13 Institutions Code.

14 (22) A court investigator providing investigations or reviews
15 in conservatorships pursuant to Section 1826, 1850, 1851, or
16 2250.6 of the Probate Code.

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

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

21 (25) A public agency described in subdivision (b) of Section
22 15975 of the Government Code, for the purpose of oversight and
23 enforcement policies with respect to its contracted providers.

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

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

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

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

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

4 (5) 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 performance
10 of their official duties.

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

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

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

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

22 (10) (A) (i) 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 (ii) 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 (iii) 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 (iv) A violation of this paragraph is a misdemeanor, and shall
8 give 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 (v) This section shall not be construed as imposing any duty
18 upon public utilities or cable corporations to request state summary
19 criminal history information on any current or prospective
20 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 level
29 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 criminal
36 history information under this paragraph shall commence July 1,
37 2005.

38 (11) 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 felon
3 to any special education program for convicted felons, including,
4 but not limited to, university alternatives and halfway houses. Only
5 conviction information shall be furnished. The college or university
6 may require the convicted felon to be fingerprinted, and any inquiry
7 to the department under this section shall include the convicted
8 felon's fingerprints and any other information specified by the
9 department.

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

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

26 (e) Whenever state summary criminal history information is
27 furnished as the result of an application and is to be used for
28 employment, licensing, or certification purposes, the Department
29 of Justice may charge the person or entity making the request a
30 fee that it determines to be sufficient to reimburse the department
31 for the cost of furnishing the information. In addition, the
32 Department of Justice may add a surcharge to the fee to fund
33 maintenance and improvements to the systems from which the
34 information is obtained. Notwithstanding any other law, any person
35 or entity required to pay a fee to the department for information
36 received under this section may charge the applicant a fee sufficient
37 to reimburse the person or entity for this expense. All moneys
38 received by the department pursuant to this section, Sections
39 11105.3 and 26190, and former Section 13588 of the Education
40 Code shall be deposited in a special account in the General Fund

1 to be available for expenditure by the department to offset costs
2 incurred pursuant to those sections and for maintenance and
3 improvements to the systems from which the information is
4 obtained upon appropriation by the Legislature.

5 (f) Whenever there is a conflict, the processing of criminal
6 fingerprints and fingerprints of applicants for security guard or
7 alarm agent registrations or firearms qualification permits
8 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
9 of the Business and Professions Code shall take priority over the
10 processing of other applicant fingerprints.

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

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

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

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

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

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

38 (A) Every conviction rendered against the applicant.

39 (B) Every arrest for an offense for which the applicant is
40 presently awaiting trial, whether the applicant is incarcerated or

1 has been released on bail or on his or her own recognizance
2 pending trial.

3 (C) Every arrest or detention, except for an arrest or detention
4 resulting in an exoneration, provided, however, that where the
5 records of the Department of Justice do not contain a disposition
6 for the arrest, the Department of Justice first makes a genuine effort
7 to determine the disposition of the arrest.

8 (D) Every successful diversion.

9 (E) Every date and agency name associated with all retained
10 peace officer or nonsworn law enforcement agency employee
11 preemployment criminal offender record information search
12 requests.

13 (F) Sex offender registration status of the applicant.

14 (l) (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 a criminal
17 justice agency or organization as defined in Section 13101, and
18 the information is to be used for criminal justice employment,
19 licensing, or certification purposes.

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

24 (A) Every conviction rendered against the applicant.

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

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

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

1 preemployment criminal offender record information search
2 requests.

3 (E) Sex offender registration status of the applicant.

4 (m) (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 1522,
8 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
9 any statute that incorporates the criteria of any of those sections
10 or this subdivision by reference, and the information is to be used
11 for employment, licensing, or certification purposes.

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

16 (A) Every conviction of an offense rendered against the
17 applicant, ~~except a conviction for which relief has been granted~~
18 ~~pursuant to Section 1203.49.~~ *applicant.*

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

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

30 (D) Sex offender registration status of the applicant.

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

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

1 (A) Paragraph (10) of subdivision (c), when the information is
2 to be used by a cable corporation.

3 (B) Section 11105.3 or 11105.4.

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

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

8 (2) With the exception of applications submitted by
9 transportation companies authorized pursuant to Section 11105.3,
10 and notwithstanding any other law, whenever state summary
11 criminal history information is initially furnished pursuant to
12 paragraph (1), the Department of Justice shall disseminate the
13 following information:

14 (A) ~~Every conviction, except a conviction for which relief has~~
15 ~~been granted pursuant to Section 1203.49, conviction~~ rendered
16 against the applicant for a violation or attempted violation of any
17 offense specified in subdivision (a) of Section 15660 of the Welfare
18 and Institutions Code. However, with the exception of those
19 offenses for which registration is required pursuant to Section 290,
20 the Department of Justice shall not disseminate information
21 pursuant to this subdivision unless the conviction occurred within
22 10 years of the date of the agency's request for information or the
23 conviction is over 10 years old but the subject of the request was
24 incarcerated within 10 years of the agency's request for
25 information.

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

31 (C) Sex offender registration status of the applicant.

32 (o) (1) This subdivision shall apply whenever state or federal
33 summary criminal history information is furnished by the
34 Department of Justice as the result of an application by an
35 authorized agency or organization pursuant to Section 379 or 550
36 of the Financial Code, or any statute that incorporates the criteria
37 of either of those sections or this subdivision by reference, and the
38 information is to be used for employment, licensing, or certification
39 purposes.

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

5 (A) Every conviction rendered against the applicant for a
 6 violation or attempted violation of any offense specified in Section
 7 550 of the Financial Code, ~~except a conviction for which relief~~
 8 ~~has been granted pursuant to Section 1203.49: Code.~~

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

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

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

26 (A) Every conviction rendered against the ~~applicant, except a~~
 27 ~~conviction for which relief has been granted pursuant to Section~~
 28 ~~1203.49: applicant.~~

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

33 (C) Sex offender registration status of the applicant.

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

1 (r) This section does not require the Department of Justice to
2 cease compliance with any other statutory notification
3 requirements.

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

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

18 (u) *State summary criminal history information compiled by*
19 *the Attorney General and disseminated pursuant to this section*
20 *shall exclude any charge or conviction for which relief has been*
21 *granted pursuant to Section 236.24 or 236.25.*

22 SEC. 9. 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.