

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1762**

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

February 2, 2016

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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, ~~and to repeal Section 1203.49 of,~~ the Penal Code, and relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1762, as amended, 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 *the* 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. Any federal-level  
2 criminal offender record requests to the Department of Justice  
3 shall be submitted with fingerprint images and related information  
4 required by the Department of Justice for the purposes of obtaining  
5 information as to the existence and content of a record of an  
6 out-of-state or federal conviction or arrest of a person or  
7 information regarding any out-of-state or federal crimes or arrests  
8 for which the Department of Justice establishes that the person is  
9 free on bail, or on his or her own recognizance pending trial or  
10 appeal. The Department of Justice shall forward to the Federal  
11 Bureau of Investigation any requests for federal summary criminal  
12 history information received pursuant to this section. The  
13 Department of Justice shall review the information returned from  
14 the Federal Bureau of Investigation and shall compile and  
15 disseminate a response to the department, county adoption agency,  
16 or licensed adoption agency.

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

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

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

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

38 (2) This subdivision shall become operative on October 1, 2008,  
39 and shall remain operative only to the extent that compliance with  
40 its provisions is required by federal law as a condition of receiving

1 funding under Title IV-E of the federal Social Security Act (42  
2 U.S.C. Sec. 670 et seq.).

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

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

13 8811. (a) The department or delegated county adoption agency  
14 shall require each person who files an adoption petition to be  
15 fingerprinted and shall secure from an appropriate law enforcement  
16 agency any criminal record of that person to determine whether  
17 the person has ever been convicted of a crime other than a minor  
18 traffic violation. The department or delegated county adoption  
19 agency may also secure the person's full criminal record, if any.  
20 Any federal-level criminal offender record requests to the  
21 Department of Justice shall be submitted with fingerprint images  
22 and related information required by the Department of Justice for  
23 the purposes of obtaining information as to the existence and  
24 content of a record of an out-of-state or federal conviction or arrest  
25 of a person or information regarding any out-of-state or federal  
26 crimes or arrests for which the Department of Justice establishes  
27 that the person is free on bail, or on his or her own recognizance  
28 pending trial or appeal. The Department of Justice shall forward  
29 to the Federal Bureau of Investigation any requests for federal  
30 summary criminal history information received pursuant to this  
31 section. The Department of Justice shall review the information  
32 returned from the Federal Bureau of Investigation and shall compile  
33 and disseminate a response to the department or delegated county  
34 adoption agency.

35 (b) Notwithstanding subdivision (c), the criminal record, if any,  
36 shall be taken into consideration when evaluating the prospective  
37 adoptive parent, and an assessment of the effects of any criminal  
38 history on the ability of the prospective adoptive parent to provide  
39 adequate and proper care and guidance to the child shall be  
40 included in the report to the court.

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

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

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

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

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

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

30 8908. (a) A licensed adoption agency shall require each person  
31 filing an application for adoption to be fingerprinted and shall  
32 secure from an appropriate law enforcement agency any criminal  
33 record of that person to determine whether the person has ever  
34 been convicted of a crime other than a minor traffic violation. The  
35 licensed adoption agency may also secure the person's full criminal  
36 record, if any. Any federal-level criminal offender record requests  
37 to the Department of Justice shall be submitted with fingerprint  
38 images and related information required by the Department of  
39 Justice for the purposes of obtaining information as to the existence  
40 and content of a record of an out-of-state or federal conviction or

1 arrest of a person or information regarding any out-of-state or  
2 federal crimes or arrests for which the Department of Justice  
3 establishes that the person is free on bail, or on his or her own  
4 recognizance pending trial or appeal. The Department of Justice  
5 shall forward to the Federal Bureau of Investigation any requests  
6 for federal summary criminal history information received pursuant  
7 to this section. The Department of Justice shall review the  
8 information returned from the Federal Bureau of Investigation and  
9 shall compile and disseminate a fitness determination to the  
10 licensed adoption agency.

11 (b) Notwithstanding subdivision (c), the criminal record, if any,  
12 shall be taken into consideration when evaluating the prospective  
13 adoptive parent, and an assessment of the effects of any criminal  
14 history on the ability of the prospective adoptive parent to provide  
15 adequate and proper care and guidance to the child shall be  
16 included in the report to the court.

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

21 (A) Any felony conviction for child abuse or neglect, spousal  
22 abuse, crimes against a child, including child pornography, or for  
23 a crime involving violence, including rape, sexual assault, or  
24 homicide, but not including other physical assault and battery. For  
25 purposes of this subdivision, crimes involving violence means  
26 those violent crimes contained in clause (i) of subparagraph (A),  
27 and subparagraph (B), of paragraph (1) of subdivision (g) of  
28 Section 1522 of the Health and Safety Code.

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

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

36 (d) Any fee charged by a law enforcement agency for  
37 fingerprinting or for checking or obtaining the criminal record of  
38 the applicant shall be paid by the applicant. The licensed adoption  
39 agency may defer, waive, or reduce the fee when its payment would

1 cause economic hardship to the prospective adoptive parents  
2 detrimental to the welfare of the adopted child.

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

4 236.1. (a) A person who deprives or violates the personal  
5 liberty of another with the intent to obtain forced labor or services,  
6 is guilty of human trafficking and shall be punished by  
7 imprisonment in the state prison for 5, 8, or 12 years and a fine of  
8 not more than five hundred thousand dollars (\$500,000).

9 (b) A person who deprives or violates the personal liberty of  
10 another with the intent to effect or maintain a violation of Section  
11 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5,  
12 311.6, or 518 is guilty of human trafficking and shall be punished  
13 by imprisonment in the state prison for 8, 14, or 20 years and a  
14 fine of not more than five hundred thousand dollars (\$500,000).

15 (c) A person who causes, induces, or persuades, or attempts to  
16 cause, induce, or persuade, a person who is a minor at the time of  
17 commission of the offense to engage in a commercial sex act, with  
18 the intent to effect or maintain a violation of Section 266, 266h,  
19 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518  
20 is guilty of human trafficking. A violation of this subdivision is  
21 punishable by imprisonment in the state prison as follows:

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

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

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

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

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

39 (g) The Legislature finds that the definition of human trafficking  
40 in this section is equivalent to the federal definition of a severe

1 form of trafficking found in Section 7102(9) of Title 22 of the  
2 United States Code.

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

4 (1) “Coercion” includes a scheme, plan, or pattern intended to  
5 cause a person to believe that failure to perform an act would result  
6 in serious harm to or physical restraint against any person; the  
7 abuse or threatened abuse of the legal process; debt bondage; or  
8 providing and facilitating the possession of a controlled substance  
9 to a person with the intent to impair the person’s judgment.

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

12 (3) “Deprivation or violation of the personal liberty of another”  
13 includes substantial and sustained restriction of another’s liberty  
14 accomplished through force, fear, fraud, deceit, coercion, violence,  
15 duress, menace, or threat of unlawful injury to the victim or to  
16 another person, under circumstances where the person receiving  
17 or apprehending the threat reasonably believes that it is likely that  
18 the person making the threat would carry it out.

19 (4) “Duress” includes a direct or implied threat of force,  
20 violence, danger, hardship, or retribution sufficient to cause a  
21 reasonable person to acquiesce in or perform an act which he or  
22 she would otherwise not have submitted to or performed; a direct  
23 or implied threat to destroy, conceal, remove, confiscate, or possess  
24 an actual or purported passport or immigration document of the  
25 victim; or knowingly destroying, concealing, removing,  
26 confiscating, or possessing an actual or purported passport or  
27 immigration document of the victim.

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

32 (6) “Great bodily injury” means a significant or substantial  
33 physical injury.

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

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

37 (9) “Serious harm” includes any harm, whether physical or  
38 nonphysical, including psychological, financial, or reputational  
39 harm, that is sufficiently serious, under all the surrounding  
40 circumstances, to compel a reasonable person of the same

1 background and in the same circumstances to perform or to  
2 continue performing labor, services, or commercial sexual acts in  
3 order to avoid incurring that harm.

4 (10) “Nonviolent crime” means any crime or offense other than  
5 murder, attempted murder, voluntary manslaughter, mayhem,  
6 kidnaping, rape, robbery, arson, carjacking, or any other violent  
7 felony as defined in subdivision (c) of Section 667.5.

8 (i) The total circumstances, including the age of the victim, the  
9 relationship between the victim and the trafficker or agents of the  
10 trafficker, and any handicap or disability of the victim, shall be  
11 factors to consider in determining the presence of “deprivation or  
12 violation of the personal liberty of another,” “duress,” and  
13 “coercion” as described in this section.

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

15 236.24. (a) An individual convicted of a nonviolent crime  
16 committed while that individual was a human trafficking victim  
17 may apply to the court in which the conviction was entered to  
18 vacate the conviction at any time after it is entered. The court shall  
19 grant the application on a finding that the applicant’s participation  
20 in the offense on which the applicant was convicted was a direct  
21 result of the applicant being a human trafficking victim.

22 (b) Subject to subdivision (c), the application shall identify the  
23 applicant, the offense for which vacatur is sought, and the court  
24 in which the conviction was entered. The applicant shall describe  
25 in the application all the available grounds and evidence for vacatur  
26 of the conviction known to the applicant.

27 (c) To maintain the confidentiality of the applicant’s status as  
28 a human trafficking victim, the application may be filed identifying  
29 the applicant by initials in any publicly available filing relating to  
30 the application. The applicant shall submit all evidence supporting  
31 the application that contains personal identifying information to  
32 the court under seal along with a statement under penalty of perjury  
33 confirming his or her identity.

34 (d) The application and all supporting evidence, including,  
35 without limitation, the identity statement and evidence submitted  
36 under seal, shall be served on the state or local prosecutorial agency  
37 that obtained the conviction for which the applicant seeks vacatur.  
38 The state or local prosecutorial agency shall have 30 days for the  
39 date of receipt of service to oppose the application.

- 1 (e) If opposition to the application is not filed by the applicable  
 2 state or local prosecutorial agency, the court shall deem the  
 3 application unopposed and shall grant the application. If the  
 4 application is opposed, the court shall hold a hearing on the  
 5 application.
- 6 (f) If the court ~~finds~~ *finds, based on clear and convincing*  
 7 *evidence*, that the applicant’s participation in the offense on which  
 8 the conviction was based was a direct result of the applicant being  
 9 a victim of human trafficking, the court shall grant the application  
 10 and vacate the conviction, strike the adjudication of guilt, and order  
 11 the relief specified in Section 236.25 and may also take additional  
 12 action and grant additional relief as it deems appropriate under the  
 13 circumstances.
- 14 (g) If the court denies the application because the evidence is  
 15 insufficient to establish grounds for vacatur, the denial shall be  
 16 without prejudice. The court shall state the reasons for its denial  
 17 in writing and, if those reasons are based on curable deficiencies  
 18 in the application, allow the applicant a reasonable time period to  
 19 cure the deficiencies upon which the court based the denial.
- 20 (h) An individual determined to be a ward of the juvenile court  
 21 in a proceeding pursuant to Section 602 of the Welfare and  
 22 Institutions Code as a result of a nonviolent crime committed while  
 23 that individual was a human trafficking victim may apply to the  
 24 juvenile court that made that determination to have the  
 25 determination set aside at any time after it was made. The court  
 26 shall grant the application ~~on a finding~~ *upon making a finding,*  
 27 *based on clear and convincing evidence*, that the applicant’s  
 28 participation in the offense on the proceeding was a direct result  
 29 of the applicant being a human trafficking victim. Upon making  
 30 the finding, the court shall order the relief prescribed in Section  
 31 786 of the Welfare and Institutions Code.
- 32 (i) In making a determination on an application under either  
 33 subdivision (a) or (h), the court may consider any evidence it deems  
 34 of sufficient credibility and probative value, including the sworn  
 35 statement of the applicant. The statement, alone, is sufficient  
 36 evidence to support the vacating of a conviction, provided the court  
 37 finds that the statement is credible. Evidence in support of granting  
 38 an application may also include, but is not limited to, all of the  
 39 following:

1 (1) Certified records of a federal, state, ~~tribal~~ *tribal*, or local  
2 court or governmental agency documenting the person's status as  
3 a victim of human trafficking at the time of the offense, including  
4 identification of a victim of human trafficking by a peace officer  
5 pursuant to Section 236.2 and certified records of approval notices  
6 or enforcement certifications generated from federal immigration  
7 proceedings, create a rebuttable presumption that an offense was  
8 committed by the defendant as a direct result of being a human  
9 trafficking victim.

10 (2) A sworn statement from a trained professional staff member  
11 of a victim services organization, an attorney, a member of the  
12 clergy, or a medical or other professional from whom the defendant  
13 has sought assistance in addressing the trauma associated with  
14 being trafficked.

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

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

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

25 236.25. (a) For any charge, ~~adjudication~~ *adjudication*, or  
26 conviction for which a human trafficking victim was granted relief  
27 under Section 236.24 of the Penal Code, the court shall order that  
28 all records in the case be sealed pursuant to Section 851.86 and  
29 shall grant the relief provided in subdivision (b) of Section 851.8.

30 (b) The human trafficking victim shall be released from all  
31 penalties and disabilities resulting from the charge, ~~adjudication~~  
32 *adjudication*, or conviction, and all actions and proceedings by  
33 law enforcement personnel, ~~courts~~ *courts*, or other government  
34 employees that led to the charge, ~~adjudication~~ *adjudication*, or  
35 conviction shall be deemed not to have occurred.

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

39 (1) The human trafficking victim may in all circumstances state  
40 that he or she has never been arrested for, charged ~~with~~ *with*, or

1 convicted of the crime that is the subject of the charge, ~~adjudication~~  
2 *adjudication*, or conviction, including without limitation in  
3 response to questions on employment, housing, financial ~~aid~~ *aid*,  
4 or loan applications.

5 (2) The human trafficking victim may not be denied rights or  
6 benefits, including, without limitation, employment, housing,  
7 financial aid, welfare, or a loan or other financial accommodation,  
8 based on the arrest, charge, ~~adjudication~~ *adjudication*, or conviction  
9 or the victim’s failure or refusal to disclose the existence of or  
10 information concerning those events.

11 (3) The human trafficking victim may not be thereafter charged  
12 or convicted of perjury or otherwise of giving a false statement by  
13 reason of having failed to disclose or acknowledge the existence  
14 of the charge, ~~adjudication~~ *adjudication*, or conviction, or any  
15 arrest, charge, indictment, ~~trial~~ *trial*, or other proceedings related  
16 thereto.

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

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

19 11105. (a) (1) The Department of Justice shall maintain state  
20 summary criminal history information.

21 (2) As used in this section:

22 (A) “State summary criminal history information” means the  
23 master record of information compiled by the Attorney General  
24 pertaining to the identification and criminal history of any person,  
25 such as name, date of birth, physical description, fingerprints,  
26 photographs, dates of arrests, arresting agencies and booking  
27 numbers, charges, dispositions, and similar data about the person.

28 (B) “State summary criminal history information” does not refer  
29 to records and data compiled by criminal justice agencies other  
30 than the Attorney General, nor does it refer to records of complaints  
31 to or investigations conducted by, or records of intelligence  
32 information or security procedures of, the office of the Attorney  
33 General and the Department of Justice.

34 (b) The Attorney General shall furnish state summary criminal  
35 history information to any of the following, if needed in the course  
36 of their duties, provided that when information is furnished to  
37 assist an agency, officer, or official of state or local government,  
38 a public utility, or any other entity, in fulfilling employment,  
39 certification, or licensing duties, Chapter 1321 of the Statutes of  
40 1974 and Section 432.7 of the Labor Code shall apply:

1 (1) The courts of the state.

2 (2) Peace officers of the state, as defined in Section 830.1,  
3 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section  
4 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and  
5 (b) of Section 830.5.

6 (3) District attorneys of the state.

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

8 (5) City attorneys pursuing civil gang injunctions pursuant to  
9 Section 186.22a, or drug abatement actions pursuant to Section  
10 3479 or 3480 of the Civil Code, or Section 11571 of the Health  
11 and Safety Code.

12 (6) Probation officers of the state.

13 (7) Parole officers of the state.

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

17 (9) A public defender or attorney of record when representing  
18 a person in a criminal case, or a parole, mandatory supervision  
19 pursuant to paragraph (5) of subdivision (h) of Section 1170, or  
20 postrelease community supervision revocation or revocation  
21 extension proceeding, and if authorized access by statutory or  
22 decisional law.

23 (10) Any agency, officer, or official of the state if the criminal  
24 history information is required to implement a statute or regulation  
25 that expressly refers to specific criminal conduct applicable to the  
26 subject person of the state summary criminal history information,  
27 and contains requirements or exclusions, or both, expressly based  
28 upon that specified criminal conduct. The agency, officer, or  
29 official of the state authorized by this paragraph to receive state  
30 summary criminal history information may also transmit fingerprint  
31 images and related information to the Department of Justice to be  
32 transmitted to the Federal Bureau of Investigation.

33 (11) Any city or county, city and county, district, or any officer  
34 or official thereof if access is needed in order to assist that agency,  
35 officer, or official in fulfilling employment, certification, or  
36 licensing duties, and if the access is specifically authorized by the  
37 city council, board of supervisors, or governing board of the city,  
38 county, or district if the criminal history information is required  
39 to implement a statute, ordinance, or regulation that expressly  
40 refers to specific criminal conduct applicable to the subject person

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

8 (12) The subject of the state summary criminal history  
9 information under procedures established under Article 5  
10 (commencing with Section 11120).

11 (13) Any person or entity when access is expressly authorized  
12 by statute if the criminal history information is required to  
13 implement a statute or regulation that expressly refers to specific  
14 criminal conduct applicable to the subject person of the state  
15 summary criminal history information, and contains requirements  
16 or exclusions, or both, expressly based upon that specified criminal  
17 conduct.

18 (14) Health officers of a city, county, city and county, or district  
19 when in the performance of their official duties enforcing Section  
20 120175 of the Health and Safety Code.

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

23 (16) Any humane society, or society for the prevention of cruelty  
24 to animals, for the specific purpose of complying with Section  
25 14502 of the Corporations Code for the appointment of humane  
26 officers.

27 (17) Local child support agencies established by Section 17304  
28 of the Family Code. When a local child support agency closes a  
29 support enforcement case containing summary criminal history  
30 information, the agency shall delete or purge from the file and  
31 destroy any documents or information concerning or arising from  
32 offenses for or of which the parent has been arrested, charged, or  
33 convicted, other than for offenses related to the parent's having  
34 failed to provide support for minor children, consistent with the  
35 requirements of Section 17531 of the Family Code.

36 (18) County child welfare agency personnel who have been  
37 delegated the authority of county probation officers to access state  
38 summary criminal history information pursuant to Section 272 of  
39 the Welfare and Institutions Code for the purposes specified in  
40 Section 16504.5 of the Welfare and Institutions Code. Information

1 from criminal history records provided pursuant to this subdivision  
2 shall not be used for any purposes other than those specified in  
3 this section and Section 16504.5 of the Welfare and Institutions  
4 Code. When an agency obtains records obtained both on the basis  
5 of name checks and fingerprint checks, final placement decisions  
6 shall be based only on the records obtained pursuant to the  
7 fingerprint check.

8 (19) The court of a tribe, or court of a consortium of tribes, that  
9 has entered into an agreement with the state pursuant to Section  
10 10553.1 of the Welfare and Institutions Code. This information  
11 may be used only for the purposes specified in Section 16504.5  
12 of the Welfare and Institutions Code and for tribal approval or  
13 tribal licensing of foster care or adoptive homes. Article 6  
14 (commencing with Section 11140) shall apply to officers, members,  
15 and employees of a tribal court receiving criminal record offender  
16 information pursuant to this section.

17 (20) Child welfare agency personnel of a tribe or consortium  
18 of tribes that has entered into an agreement with the state pursuant  
19 to Section 10553.1 of the Welfare and Institutions Code and to  
20 whom the state has delegated duties under paragraph (2) of  
21 subdivision (a) of Section 272 of the Welfare and Institutions Code.  
22 The purposes for use of the information shall be for the purposes  
23 specified in Section 16504.5 of the Welfare and Institutions Code  
24 and for tribal approval or tribal licensing of foster care or adoptive  
25 homes. When an agency obtains records on the basis of name  
26 checks and fingerprint checks, final placement decisions shall be  
27 based only on the records obtained pursuant to the fingerprint  
28 check. Article 6 (commencing with Section 11140) shall apply to  
29 child welfare agency personnel receiving criminal record offender  
30 information pursuant to this section.

31 (21) An officer providing conservatorship investigations  
32 pursuant to Sections 5351, 5354, and 5356 of the Welfare and  
33 Institutions Code.

34 (22) A court investigator providing investigations or reviews  
35 in conservatorships pursuant to Section 1826, 1850, 1851, or  
36 2250.6 of the Probate Code.

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

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

1 (25) A public agency described in subdivision (b) of Section  
2 15975 of the Government Code, for the purpose of oversight and  
3 enforcement policies with respect to its contracted providers.

4 (c) The Attorney General may furnish state summary criminal  
5 history information and, when specifically authorized by this  
6 subdivision, federal level criminal history information upon a  
7 showing of a compelling need to any of the following, provided  
8 that when information is furnished to assist an agency, officer, or  
9 official of state or local government, a public utility, or any other  
10 entity in fulfilling employment, certification, or licensing duties,  
11 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the  
12 Labor Code shall apply:

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

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

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

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

24 (5) To public officers, other than peace officers, of the United  
25 States, other states, or possessions or territories of the United  
26 States, provided that access to records similar to state summary  
27 criminal history information is expressly authorized by a statute  
28 of the United States, other states, or possessions or territories of  
29 the United States if the information is needed for the performance  
30 of their official duties.

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

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

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

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

4 (10) (A) (i) Any public utility, as defined in Section 216 of the  
5 Public Utilities Code, or any cable corporation as defined in  
6 subparagraph (B), if receipt of criminal history information is  
7 needed in order to assist in employing current or prospective  
8 employees, contract employees, or subcontract employees who,  
9 in the course of their employment, may be seeking entrance to  
10 private residences or adjacent grounds. The information provided  
11 shall be limited to the record of convictions and any arrest for  
12 which the person is released on bail or on his or her own  
13 recognizance pending trial.

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

17 (iii) Any information obtained from the state summary criminal  
18 history is confidential and the receiving public utility or cable  
19 corporation shall not disclose its contents, other than for the  
20 purpose for which it was acquired. The state summary criminal  
21 history information in the possession of the public utility or cable  
22 corporation and all copies made from it shall be destroyed not  
23 more than 30 days after employment or promotion or transfer is  
24 denied or granted, except for those cases where a current or  
25 prospective employee is out on bail or on his or her own  
26 recognizance pending trial, in which case the state summary  
27 criminal history information and all copies shall be destroyed not  
28 more than 30 days after the case is resolved.

29 (iv) A violation of this paragraph is a misdemeanor, and shall  
30 give the current or prospective employee who is injured by the  
31 violation a cause of action against the public utility or cable  
32 corporation to recover damages proximately caused by the  
33 violations. Any public utility's or cable corporation's request for  
34 state summary criminal history information for purposes of  
35 employing current or prospective employees who may be seeking  
36 entrance to private residences or adjacent grounds in the course  
37 of their employment shall be deemed a "compelling need" as  
38 required to be shown in this subdivision.

39 (v) This section shall not be construed as imposing any duty  
40 upon public utilities or cable corporations to request state summary

1 criminal history information on any current or prospective  
2 employees.

3 (B) For purposes of this paragraph, “cable corporation” means  
4 any corporation or firm that transmits or provides television,  
5 computer, or telephone services by cable, digital, fiber optic,  
6 satellite, or comparable technology to subscribers for a fee.

7 (C) Requests for federal level criminal history information  
8 received by the Department of Justice from entities authorized  
9 pursuant to subparagraph (A) shall be forwarded to the Federal  
10 Bureau of Investigation by the Department of Justice. Federal level  
11 criminal history information received or compiled by the  
12 Department of Justice may then be disseminated to the entities  
13 referenced in subparagraph (A), as authorized by law.

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

17 (ii) Authority for a public utility to request federal level criminal  
18 history information under this paragraph shall commence July 1,  
19 2005.

20 (11) To any campus of the California State University or the  
21 University of California, or any four year college or university  
22 accredited by a regional accreditation organization approved by  
23 the United States Department of Education, if needed in  
24 conjunction with an application for admission by a convicted felon  
25 to any special education program for convicted felons, including,  
26 but not limited to, university alternatives and halfway houses. Only  
27 conviction information shall be furnished. The college or university  
28 may require the convicted felon to be fingerprinted, and any inquiry  
29 to the department under this section shall include the convicted  
30 felon’s fingerprints and any other information specified by the  
31 department.

32 (12) To any foreign government, if requested by the individual  
33 who is the subject of the record requested, if needed in conjunction  
34 with the individual’s application to adopt a minor child who is a  
35 citizen of that foreign nation. Requests for information pursuant  
36 to this paragraph shall be in accordance with the process described  
37 in Sections 11122 to 11124, inclusive. The response shall be  
38 provided to the foreign government or its designee and to the  
39 individual who requested the information.

1 (d) Whenever an authorized request for state summary criminal  
2 history information pertains to a person whose fingerprints are on  
3 file with the Department of Justice and the department has no  
4 criminal history of that person, and the information is to be used  
5 for employment, licensing, or certification purposes, the fingerprint  
6 card accompanying the request for information, if any, may be  
7 stamped “no criminal record” and returned to the person or entity  
8 making the request.

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

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

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

37 (h) It is not a violation of this section to include information  
38 obtained from a record in (1) a transcript or record of a judicial or  
39 administrative proceeding or (2) any other public record if the

1 inclusion of the information in the public record is authorized by  
2 a court, statute, or decisional law.

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

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

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

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

22 (A) Every conviction rendered against the applicant.

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

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

32 (D) Every successful diversion.

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

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

38 (l) (1) This subdivision shall apply whenever state or federal  
39 summary criminal history information is furnished by the  
40 Department of Justice as the result of an application by a criminal

1 justice agency or organization as defined in Section 13101, and  
2 the information is to be used for criminal justice employment,  
3 licensing, or certification purposes.

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

8 (A) Every conviction rendered against the applicant.

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

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

22 (D) Every date and agency name associated with all retained  
23 peace officer or nonsworn law enforcement agency employee  
24 preemployment criminal offender record information search  
25 requests.

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

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

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

39 (A) Every conviction of an offense rendered against the  
40 applicant.

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

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

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

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

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

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

25 (B) Section 11105.3 or 11105.4.

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

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

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

36 (A) Every conviction rendered against the applicant for a  
37 violation or attempted violation of any offense specified in  
38 subdivision (a) of Section 15660 of the Welfare and Institutions  
39 Code. However, with the exception of those offenses for which  
40 registration is required pursuant to Section 290, the Department

1 of Justice shall not disseminate information pursuant to this  
2 subdivision unless the conviction occurred within 10 years of the  
3 date of the agency's request for information or the conviction is  
4 over 10 years old but the subject of the request was incarcerated  
5 within 10 years of the agency's request for information.

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

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

12 (o) (1) This subdivision shall apply whenever state or federal  
13 summary criminal history information is furnished by the  
14 Department of Justice as the result of an application by an  
15 authorized agency or organization pursuant to Section 379 or 550  
16 of the Financial Code, or any statute that incorporates the criteria  
17 of either of those sections or this subdivision by reference, and the  
18 information is to be used for employment, licensing, or certification  
19 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 for a  
25 violation or attempted violation of any offense specified in Section  
26 550 of the Financial Code.

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

32 (p) (1) This subdivision shall apply whenever state or federal  
33 criminal history information is furnished by the Department of  
34 Justice as the result of an application by an agency, organization,  
35 or individual not defined in subdivision (k), (l), (m), (n), or (o), or  
36 by a transportation company authorized pursuant to Section  
37 11105.3, or any statute that incorporates the criteria of that section  
38 or this subdivision by reference, and the information is to be used  
39 for employment, licensing, or certification 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.

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) Sex offender registration status of the applicant.

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

18 (r) This section does not require the Department of Justice to  
19 cease compliance with any other statutory notification  
20 requirements.

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

24 (t) Whenever state or federal summary criminal history  
25 information is furnished by the Department of Justice as the result  
26 of an application by an authorized agency, organization, or  
27 individual defined in subdivisions (k) to (p), inclusive, and the  
28 information is to be used for employment, licensing, or certification  
29 purposes, the authorized agency, organization, or individual shall  
30 expeditiously furnish a copy of the information to the person to  
31 whom the information relates if the information is a basis for an  
32 adverse employment, licensing, or certification decision. When  
33 furnished other than in person, the copy shall be delivered to the  
34 last contact information provided by the applicant.

35 (u) State summary criminal history information compiled by  
36 the Attorney General and disseminated pursuant to this section  
37 shall exclude any charge or conviction for which relief has been  
38 granted pursuant to Section 236.24 or 236.25.

39 SEC. 9. No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

O