

AMENDED IN ASSEMBLY MAY 31, 2016

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 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 a human trafficking victim to apply to the court to vacate the conviction ~~at any time after it was entered. if the individual has not been convicted of any crime after successfully completing probation, or if probation is not granted, for 2 years after release from custody.~~ 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. dismissed if the individual has not had a sustained petition for any crime or been convicted of any crime for one year prior to the date of application.~~ 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~~ *identifying* 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:

1 8712. (a) The department, county adoption agency, or licensed  
2 adoption agency shall require each person who files an application  
3 for adoption to be fingerprinted and shall secure from an  
4 appropriate law enforcement agency any criminal record of that  
5 person to determine whether the person has ever been convicted  
6 of a crime other than a minor traffic violation. The department,  
7 county adoption agency, or licensed adoption agency may also  
8 secure the person's full criminal record, if any. Any federal-level  
9 criminal offender record requests to the Department of Justice  
10 shall be submitted with fingerprint images and related information  
11 required by the Department of Justice for the purposes of obtaining  
12 information as to the existence and content of a record of an  
13 out-of-state or federal conviction or arrest of a person or  
14 information regarding any out-of-state or federal crimes or arrests  
15 for which the Department of Justice establishes that the person is  
16 free on bail, or on his or her own recognizance pending trial or  
17 appeal. The Department of Justice shall forward to the Federal  
18 Bureau of Investigation any requests for federal summary criminal  
19 history information received pursuant to this section. The  
20 Department of Justice shall review the information returned from  
21 the Federal Bureau of Investigation and shall compile and  
22 disseminate a response to the department, county adoption agency,  
23 or licensed adoption agency.

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

30 (c) (1) The department, county adoption agency, or licensed  
31 adoption agency shall not give final approval for an adoptive  
32 placement in any home in which the prospective adoptive parent  
33 or any adult living in the prospective adoptive home has either of  
34 the following:

35 (A) A felony conviction for child abuse or neglect, spousal  
36 abuse, crimes against a child, including child pornography, or for  
37 a crime involving violence, including rape, sexual assault, or  
38 homicide, but not including other physical assault and battery. For  
39 purposes of this subdivision, crimes involving violence means  
40 those violent crimes contained in clause (i) of subparagraph (A),

1 and subparagraph (B), of paragraph (1) of subdivision (g) of  
2 Section 1522 of the Health and Safety Code.

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

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

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

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

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

1 and disseminate a response to the department or delegated county  
2 adoption agency.

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

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

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

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

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

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

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

38 8908. (a) A licensed adoption agency shall require each person  
39 filing an application for adoption to be fingerprinted and shall  
40 secure from an appropriate law enforcement agency any criminal

1 record of that person to determine whether the person has ever  
2 been convicted of a crime other than a minor traffic violation. The  
3 licensed adoption agency may also secure the person's full criminal  
4 record, if any. Any federal-level criminal offender record requests  
5 to 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) 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) A person who deprives or violates the personal liberty of  
17 another with the intent to effect or maintain a violation of Section  
18 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5,  
19 311.6, or 518 is guilty of human trafficking and shall be punished  
20 by imprisonment in the state prison for 8, 14, or 20 years and a  
21 fine of not more than five hundred thousand dollars (\$500,000).

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

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

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

35 (d) In determining whether a minor was caused, induced, or  
36 persuaded to engage in a commercial sex act, the totality of the  
37 circumstances, including the age of the victim, his or her  
38 relationship to the trafficker or agents of the trafficker, and any  
39 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(9) of Title 22 of the  
10 United States Code.

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

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

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

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

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

36 (5) “Forced labor or services” means labor or services that are  
37 performed or provided by a person and are obtained or maintained  
38 through force, fraud, duress, or coercion, or equivalent conduct  
39 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 (8) “Minor” means a person less than 18 years of age.

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

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

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

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

24 236.24. (a) An individual convicted of a nonviolent crime  
25 committed while that individual was a human trafficking victim  
26 may apply to the court in which the conviction was entered to  
27 ~~vacate the conviction at any time after it is entered.~~ *if the individual*  
28 *has not been convicted of any crime after successfully completing*  
29 *probation, or if probation is not granted, for two years after release*  
30 *from custody.* The court shall grant the application on a finding  
31 that the applicant’s participation in the offense on which the  
32 applicant was convicted was a direct result of the applicant being  
33 a human trafficking victim.

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

39 (c) To maintain the confidentiality of the applicant’s status as  
40 a human trafficking victim, the application may be filed identifying

1 the applicant by initials in any publicly available filing relating to  
2 the application. The applicant shall submit all evidence supporting  
3 the application that contains personal identifying information to  
4 the court under seal along with a statement under penalty of perjury  
5 confirming his or her identity.

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

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

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

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

31 (h) An individual determined to be a ward of the juvenile court  
32 in a proceeding pursuant to Section 602 of the Welfare and  
33 Institutions Code as a result of a nonviolent crime committed while  
34 that individual was a human trafficking victim may apply to the  
35 juvenile court that made that determination to have the  
36 determination set aside ~~at any time after it was made.~~ *if the*  
37 *individual has not had a sustained petition for any crime or been*  
38 *convicted of any crime for one year prior to the date of application.*  
39 The court shall grant the application upon making a finding, based  
40 on clear and convincing evidence, that the applicant's participation

1 in the offense on the proceeding was a direct result of the applicant  
2 being a human trafficking victim. Upon making the finding, the  
3 court shall order the relief prescribed in Section 786 of the Welfare  
4 and Institutions Code.

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

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

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

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

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

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

37 236.25. (a) For any charge, adjudication, or conviction for  
38 which a human trafficking victim was granted relief under Section  
39 236.24 of the Penal Code, the court shall order that all records in

1 the case be sealed pursuant to Section 851.86 and shall grant the  
2 relief provided in subdivision (b) of Section 851.8.

3 (b) The human trafficking victim shall be released from all  
4 penalties and disabilities resulting from the charge, adjudication,  
5 or conviction, and all actions and proceedings by law enforcement  
6 personnel, courts, or other government employees that led to the  
7 charge, adjudication, or conviction shall be deemed not to have  
8 occurred.

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

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

18 (2) The human trafficking victim may not be denied rights or  
19 benefits, including, without limitation, employment, housing,  
20 financial aid, welfare, or a loan or other financial accommodation,  
21 based on the arrest, charge, adjudication, or conviction or the  
22 victim's failure or refusal to disclose the existence of or information  
23 concerning those events.

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

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

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

31 11105. (a) (1) The Department of Justice shall maintain state  
32 summary criminal history information.

33 (2) As used in this section:

34 (A) "State summary criminal history information" means the  
35 master record of information compiled by the Attorney General  
36 pertaining to the identification and criminal history of any person,  
37 such as name, date of birth, physical description, fingerprints,  
38 photographs, dates of arrests, arresting agencies and booking  
39 numbers, charges, dispositions, and similar data about the person.

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

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

14 (1) The courts of the state.

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

19 (3) District attorneys of the state.

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

21 (5) City attorneys pursuing civil gang injunctions pursuant to  
22 Section 186.22a, or drug abatement actions pursuant to Section  
23 3479 or 3480 of the Civil Code, or Section 11571 of the Health  
24 and Safety Code.

25 (6) Probation officers of the state.

26 (7) Parole officers of the state.

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

30 (9) A public defender or attorney of record when representing  
31 a person in a criminal case, or a parole, mandatory supervision  
32 pursuant to paragraph (5) of subdivision (h) of Section 1170, or  
33 postrelease community supervision revocation or revocation  
34 extension proceeding, and if authorized access by statutory or  
35 decisional law.

36 (10) Any agency, officer, or official of the state if the criminal  
37 history information is required to implement a statute or regulation  
38 that expressly refers to specific criminal conduct applicable to the  
39 subject person of the state summary criminal history information,  
40 and contains requirements or exclusions, or both, expressly based

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

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

21 (12) The subject of the state summary criminal history  
22 information under procedures established under Article 5  
23 (commencing with Section 11120).

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

31 (14) Health officers of a city, county, city and county, or district  
32 when in the performance of their official duties enforcing Section  
33 120175 of the Health and Safety Code.

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

36 (16) Any humane society, or society for the prevention of cruelty  
37 to animals, for the specific purpose of complying with Section  
38 14502 of the Corporations Code for the appointment of humane  
39 officers.

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

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

22 (19) The court of a tribe, or court of a consortium of tribes, that  
23 has entered into an agreement with the state pursuant to Section  
24 10553.1 of the Welfare and Institutions Code. This information  
25 may be used only for the purposes specified in Section 16504.5  
26 of the Welfare and Institutions Code and for tribal approval or  
27 tribal licensing of foster care or adoptive homes. Article 6  
28 (commencing with Section 11140) shall apply to officers, members,  
29 and employees of a tribal court receiving criminal record offender  
30 information pursuant to this section.

31 (20) Child welfare agency personnel of a tribe or consortium  
32 of tribes that has entered into an agreement with the state pursuant  
33 to Section 10553.1 of the Welfare and Institutions Code and to  
34 whom the state has delegated duties under paragraph (2) of  
35 subdivision (a) of Section 272 of the Welfare and Institutions Code.  
36 The purposes for use of the information shall be for the purposes  
37 specified in Section 16504.5 of the Welfare and Institutions Code  
38 and for tribal approval or tribal licensing of foster care or adoptive  
39 homes. When an agency obtains records on the basis of name  
40 checks and fingerprint checks, final placement decisions shall be

1 based only on the records obtained pursuant to the fingerprint  
2 check. Article 6 (commencing with Section 11140) shall apply to  
3 child welfare agency personnel receiving criminal record offender  
4 information pursuant to this section.

5 (21) An officer providing conservatorship investigations  
6 pursuant to Sections 5351, 5354, and 5356 of the Welfare and  
7 Institutions Code.

8 (22) A court investigator providing investigations or reviews  
9 in conservatorships pursuant to Section 1826, 1850, 1851, or  
10 2250.6 of the Probate Code.

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

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

15 (25) A public agency described in subdivision (b) of Section  
16 15975 of the Government Code, for the purpose of oversight and  
17 enforcement policies with respect to its contracted providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (iii) Any information obtained from the state summary criminal  
30 history is confidential and the receiving public utility or cable  
31 corporation shall not disclose its contents, other than for the  
32 purpose for which it was acquired. The state summary criminal  
33 history information in the possession of the public utility or cable  
34 corporation and all copies made from it shall be destroyed not  
35 more than 30 days after employment or promotion or transfer is  
36 denied or granted, except for those cases where a current or  
37 prospective employee is out on bail or on his or her own  
38 recognizance pending trial, in which case the state summary  
39 criminal history information and all copies shall be destroyed not  
40 more than 30 days after the case is resolved.

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

11 (v) This section shall not be construed as imposing any duty  
12 upon public utilities or cable corporations to request state summary  
13 criminal history information on any current or prospective  
14 employees.

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

19 (C) Requests for federal level criminal history information  
20 received by the Department of Justice from entities authorized  
21 pursuant to subparagraph (A) shall be forwarded to the Federal  
22 Bureau of Investigation by the Department of Justice. Federal level  
23 criminal history information received or compiled by the  
24 Department of Justice may then be disseminated to the entities  
25 referenced in subparagraph (A), as authorized by law.

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

29 (ii) Authority for a public utility to request federal level criminal  
30 history information under this paragraph shall commence July 1,  
31 2005.

32 (11) To any campus of the California State University or the  
33 University of California, or any four year college or university  
34 accredited by a regional accreditation organization approved by  
35 the United States Department of Education, if needed in  
36 conjunction with an application for admission by a convicted felon  
37 to any special education program for convicted felons, including,  
38 but not limited to, university alternatives and halfway houses. Only  
39 conviction information shall be furnished. The college or university  
40 may require the convicted felon to be fingerprinted, and any inquiry

1 to the department under this section shall include the convicted  
2 felon's fingerprints and any other information specified by the  
3 department.

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

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

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

39 (f) Whenever there is a conflict, the processing of criminal  
40 fingerprints and fingerprints of applicants for security guard or

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

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

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

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

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

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

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

32 (A) Every conviction rendered against the applicant.

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

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

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

3 (D) Every successful diversion.

4 (E) Every date and agency name associated with all retained  
5 peace officer or nonsworn law enforcement agency employee  
6 preemployment criminal offender record information search  
7 requests.

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

9 (l) (1) This subdivision shall apply whenever state or federal  
10 summary criminal history information is furnished by the  
11 Department of Justice as the result of an application by a criminal  
12 justice agency or organization as defined in Section 13101, and  
13 the information is to be used for criminal justice employment,  
14 licensing, or certification purposes.

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

19 (A) Every conviction rendered against the applicant.

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

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

33 (D) 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 (E) Sex offender registration status of the applicant.

38 (m) (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 an

1 authorized agency or organization pursuant to Section 1522,  
2 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or  
3 any statute that incorporates the criteria of any of those sections  
4 or this subdivision by reference, and the information is to be used  
5 for employment, licensing, or certification purposes.

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

10 (A) Every conviction of an offense rendered against the  
11 applicant.

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

16 (C) Every arrest for an offense for which the Department of  
17 Social Services is required by paragraph (1) of subdivision (a) of  
18 Section 1522 of the Health and Safety Code to determine if an  
19 applicant has been arrested. However, if the records of the  
20 Department of Justice do not contain a disposition for an arrest,  
21 the Department of Justice shall first make a genuine effort to  
22 determine the disposition of the arrest.

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

24 (3) Notwithstanding the requirements of the sections referenced  
25 in paragraph (1) of this subdivision, the Department of Justice  
26 shall not disseminate information about an arrest subsequently  
27 deemed a detention or an arrest that resulted in either the successful  
28 completion of a diversion program or exoneration.

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

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

36 (B) Section 11105.3 or 11105.4.

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

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

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

7 (A) Every conviction rendered against the applicant for a  
8 violation or attempted violation of any offense specified in  
9 subdivision (a) of Section 15660 of the Welfare and Institutions  
10 Code. However, with the exception of those offenses for which  
11 registration is required pursuant to Section 290, the Department  
12 of Justice shall not disseminate information pursuant to this  
13 subdivision unless the conviction occurred within 10 years of the  
14 date of the agency's request for information or the conviction is  
15 over 10 years old but the subject of the request was incarcerated  
16 within 10 years of the agency's request for information.

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

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

23 (o) (1) This subdivision shall apply whenever state or federal  
24 summary criminal history information is furnished by the  
25 Department of Justice as the result of an application by an  
26 authorized agency or organization pursuant to Section 379 or 550  
27 of the Financial Code, or any statute that incorporates the criteria  
28 of either of those sections or this subdivision by reference, and the  
29 information is to be used for employment, licensing, or certification  
30 purposes.

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

35 (A) Every conviction rendered against the applicant for a  
36 violation or attempted violation of any offense specified in Section  
37 550 of the Financial Code.

38 (B) Every arrest for a violation or attempted violation of an  
39 offense specified in Section 550 of the Financial Code for which  
40 the applicant is presently awaiting trial, whether the applicant is

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

3 (p) (1) This subdivision shall apply whenever state or federal  
4 criminal history information is furnished by the Department of  
5 Justice as the result of an application by an agency, organization,  
6 or individual not defined in subdivision (k), (l), (m), (n), or (o), or  
7 by a transportation company authorized pursuant to Section  
8 11105.3, or any statute that incorporates the criteria of that section  
9 or this subdivision by reference, and the information is to be used  
10 for employment, licensing, or certification purposes.

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

15 (A) Every conviction rendered against the applicant.

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

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

21 (q) All agencies, organizations, or individuals defined in  
22 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the  
23 Department of Justice for subsequent notification pursuant to  
24 Section 11105.2. This subdivision shall not supersede sections that  
25 mandate an agency, organization, or individual to contract with  
26 the Department of Justice for subsequent notification pursuant to  
27 Section 11105.2.

28 (r) This section does not require the Department of Justice to  
29 cease compliance with any other statutory notification  
30 requirements.

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

34 (t) Whenever state or federal summary criminal history  
35 information is furnished by the Department of Justice as the result  
36 of an application by an authorized agency, organization, or  
37 individual defined in subdivisions (k) to (p), inclusive, and the  
38 information is to be used for employment, licensing, or certification  
39 purposes, the authorized agency, organization, or individual shall  
40 expeditiously furnish a copy of the information to the person to

1 whom the information relates if the information is a basis for an  
2 adverse employment, licensing, or certification decision. When  
3 furnished other than in person, the copy shall be delivered to the  
4 last contact information provided by the applicant.

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

9 SEC. 9. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution because  
11 the only costs that may be incurred by a local agency or school  
12 district will be incurred because this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the penalty  
14 for a crime or infraction, within the meaning of Section 17556 of  
15 the Government Code, or changes the definition of a crime within  
16 the meaning of Section 6 of Article XIII B of the California  
17 Constitution.