

Assembly Bill No. 130

CHAPTER 86

An act to amend Section 1204.5 of the Penal Code, relating to criminal actions.

[Approved by Governor July 5, 1995. Filed with
Secretary of State July 6, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 130, Rainey. Criminal actions: pre-trial information.

Existing law prohibits a judge from reading or considering any information relating to the arrest or conviction record of the defendant, or any affidavit or other written report, without the consent of the defendant, except as authorized by the rules of evidence or as otherwise specified.

This bill would state that the above prohibition does not preclude a judge, who is not the preliminary hearing or trial judge in the case, from considering any information about the defendant for the purpose of that judge adopting a pre-trial sentencing position or approving or disapproving a guilty plea, under certain circumstances.

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

SECTION 1. Section 1204.5 of the Penal Code is amended to read:

1204.5. (a) In any criminal action, after the filing of any complaint or other accusatory pleading and before a plea, finding, or verdict of guilty, no judge shall read or consider any written report of any law enforcement officer or witness to any offense, any information reflecting the arrest or conviction record of a defendant, or any affidavit or representation of any kind, verbal or written, without the defendant's consent given in open court, except as provided in the rules of evidence applicable at the trial, or as provided in affidavits in connection with the issuance of a warrant or the hearing of any law and motion matter, or in any application for an order fixing or changing bail, or a petition for a writ.

(b) This section does not preclude a judge, who is not the preliminary hearing or trial judge in the case, from considering any information about the defendant for the purpose of that judge adopting a pre-trial sentencing position or approving or disapproving a guilty plea entered pursuant to Section 1192.5, if all of the following occur:

(1) The defendant is represented by counsel, unless he or she expressly waives the right to counsel.



(2) Any information provided to the judge for either of those purposes is also provided to the district attorney and to the defense counsel at least five days prior to any hearing or conference held for the purpose of considering a proposed guilty plea or proposed sentence.

(3) At any hearing or conference held for either of those purposes, defense counsel or the district attorney is allowed to provide information, either on or off the record, to supplement or rebut the information provided pursuant to paragraph (2).

