

AMENDED IN SENATE APRIL 28, 1997

SENATE BILL

No. 1302

Introduced by Senator Leslie

(Coauthor: Senator Haynes)

*(Coauthors: Assembly Members Ashburn, Baldwin,
Cunneen, Leach, Margett, Olberg, Thompson, and Woods)*

February 28, 1997

An act to amend Section 11105.3 of the Penal Code, relating to employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as amended, Leslie. Employees: criminal history information.

Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to notify, in writing, the parents or guardians who reside with each pupil of that school whenever that school hires an employee who, in the course of his or her employment, will come in contact with minor pupils and who has been convicted of a sex offense, as defined.

Existing law authorizes a human resource agency or employer to request from the Department of Justice records of all convictions or any arrest pending adjudication involving specified sex or controlled substances offenses of a person who applies for employment or a volunteer position in which he or she would have minors in his or her care.

This bill would require every human resource agency or employer *that makes a request pursuant to the above*

provision to notify, in writing at least 10 days prior to employment of a person who is the subject of a request, the parents or guardians who reside with a minor whenever that human resource agency or employer hires an employee who, in the course of his or her employment, will come in contact with the minor and who has been convicted of one of several specified sex offenses. The bill would exempt any person who conveys or receives information in good-faith conformity with the provision from prosecution under criminal laws relating to the unlawful furnishing of state summary criminal history information for that conveying or receiving of information.

This bill would ~~add to~~ revise those sex offenses to which this provision applies by, among other things, including the offenses of sexual battery, rape or penetration with an object by force in concert, and loitering and molesting pupils.

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

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

1 SECTION 1. Section 11105.3 of the Penal Code is
2 amended to read:

3 11105.3. (a) Notwithstanding any other law, a human
4 resource agency or an employer may request from the
5 Department of Justice records of all convictions or any
6 arrest pending adjudication involving the offenses
7 specified in subdivision (h) of a person who applies for a
8 license, employment, or volunteer position, in which he
9 or she would have supervisory or disciplinary power over
10 a minor or any person under his or her care. The
11 department shall furnish the information to the
12 requesting employer and shall also send a copy of the
13 information to the applicant.

14 (b) Any request for records under subdivision (a) shall
15 include the applicant's fingerprints, which may be taken
16 by the requester, and any other data specified by the
17 department. The request shall be on a form approved by
18 the department, and the department may charge a fee to
19 be paid by the employer, human resource agency, or
20 applicant for the actual cost of processing the request.



1 However, no fee shall be charged a nonprofit
2 organization. The department shall destroy an
3 application within six months after the requested
4 information is sent to the employer and applicant.

5 (c) Every human resource agency or employer *that*
6 *makes a request pursuant to this section* shall notify, in
7 *writing at least 10 days prior to employment of a person*
8 *who is the subject of a request pursuant to this section*, the
9 parents or guardians who reside with a minor, whenever
10 that agency or employer hires an employee who, in the
11 course of his or her employment, will come in contact
12 with the minor and who has been convicted of an offense
13 specified in paragraph (1) of subdivision (h)—~~or as~~
14 ~~specified in the applicable provision of law governing the~~
15 ~~agency's or employer's access to criminal history~~
16 ~~information~~. Notwithstanding any other provision of law,
17 any person who conveys or receives information in good
18 faith conformity with this section is exempt from
19 prosecution under Section 11142 or 11143 for that
20 conveying or receiving of information. Notwithstanding
21 subdivision (d), the notification requirements of this
22 subdivision shall apply as an additional requirement of
23 any other provision of law requiring criminal record
24 access or dissemination of criminal history information.

25 (d) Nothing in this section supersedes any law
26 requiring criminal record access or dissemination of
27 criminal history information. In any conflict with another
28 statute, dissemination of criminal history information
29 shall be pursuant to the mandatory statute. This
30 subdivision applies to, but is not limited to, requirements
31 pursuant to Article 1 (commencing with Section 1500) of
32 Chapter 3 of, and Chapter 3.2 (commencing with Section
33 1569) and Chapter 3.4 (commencing with Section
34 1596.70) of, Division 2 of, and Section 1522 of, the Health
35 and Safety Code, and Sections 8712, 8811, and 8908 of the
36 Family Code.

37 (e) The department may adopt regulations to
38 implement the provisions of this section as necessary.

39 (f) As used in this section, “employer” means any
40 nonprofit corporation or other organizations specified by



1 the Attorney General which employs or uses the services
2 of volunteers in positions in which the volunteer or
3 employee has supervisory or disciplinary power over a
4 child or children. ~~For purposes of subdivision (e),~~
5 ~~“employer” also means every person, firm, association,~~
6 ~~partnership, or corporation that is authorized or required~~
7 ~~by law to request from the Department of Justice~~
8 ~~criminal record access or dissemination of criminal~~
9 ~~history information and that employs any person whose~~
10 ~~primary duty includes having supervisory or disciplinary~~
11 ~~power over a minor.~~

12 (g) As used in this section, “human resource agency”
13 means a public or private entity, excluding any agency
14 responsible for licensing of facilities pursuant to the
15 California Community Care Facilities Act (Chapter 3
16 commencing with Section 1500), the California
17 Residential Care Facilities for the Elderly Act (Chapter
18 3.2 commencing with Section 1569), Chapter 3.01
19 commencing with Section 1568.01, and the California
20 Child Day Care Facilities Act (Chapter 3.4 commencing
21 with Section 1596.70) of Division 2 of the Health and
22 Safety Code, responsible for determining the character
23 and fitness of a person who is (1) applying for a license,
24 employment, or as a volunteer within the human services
25 field that involves the care and security of children, the
26 elderly, the handicapped, or the mentally impaired, or
27 (2) applying to adopt a child or to be a foster parent.

28 (h) Records of the following offenses shall be
29 furnished as provided in subdivision (a):

30 ~~(1) Violations or attempted violations of Section 220,~~
31 ~~subdivision (a), (b), or (c) of Section 243.4, Section 261,~~
32 ~~261.5, 262, 264.1, 266, 266j, 267, 272, 273a, 273d, or 273.5,~~
33 ~~Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4,~~
34 ~~311.10, 311.11, 314, 647b, or 647.6, former Section 647a, or~~
35 ~~subdivision (a) or (d) of Section 647, or commitment as~~
36 ~~a mentally disordered sex offender under former Article~~
37 ~~1 commencing with Section 6300) of Chapter 2 of Part~~
38 ~~2 of Division 6 of the Welfare and Institutions Code.~~

39 *(1) Violations or attempted violations of any sex*
40 *offense listed in Section 290 or 647b.*



1 (2) Any crime described in the California Uniform
2 Controlled Substances Act (Division 10 (commencing
3 with Section 11000) of the Health and Safety Code),
4 provided that, except as otherwise provided in
5 subdivision (c), no record of a misdemeanor conviction
6 shall be transmitted to the requester unless the subject of
7 the request has a total of three or more misdemeanor or
8 felony convictions defined in this section within the
9 immediately preceding 10-year period.

10 (3) Any felony or misdemeanor conviction within 10
11 years of the date of the employer's request under
12 subdivision (a), for a violation or attempted violation of
13 Chapter 3 (commencing with Section 207), Section 211 or
14 215, wherein it is charged and proved that the defendant
15 personally used a deadly or dangerous weapon, as
16 provided in subdivision (b) of Section 12022, in the
17 commission of that offense, Section 217.1, Chapter 8
18 (commencing with Section 236), Chapter 9
19 (commencing with Section 240), and for a violation of any
20 of the offenses specified in subdivision (c) of Section
21 667.5, provided that no record of a misdemeanor
22 conviction shall be transmitted to the requester unless
23 the subject of the request has a total of three or more
24 misdemeanor or felony convictions defined in this section
25 within the immediately preceding 10-year period.

26 (4) A conviction for a violation or attempted violation
27 of an offense committed outside the State of California
28 shall be furnished if the offense would have been a crime
29 as defined in this section if committed in California.

30 (i) Except as provided in subdivision (c), any criminal
31 history information obtained pursuant to this section is
32 confidential and no recipient shall disclose its contents
33 other than for the purpose for which it was acquired.

