



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

To: Board Members

Subject: Agenda Item III – Discussion and Consideration of Senate Bill 1298 (Skinner) The Increasing Access to Employment Act

Version: Amended April 4, 2018

Status: Senate Appropriations Suspense File

Staff Recommendation: Oppose

Summary:

Existing law requires the Department of Justice (DOJ) to maintain state summary criminal history information, and requires the Attorney General to furnish every conviction of an offense rendered against an applicant to the board upon request. DOJ is required to provide the board with every conviction for which registration as a sex offender is required, every conviction that occurred within 10 years of the date of the request, or every conviction for which the person was incarcerated within 10 years of the request for information for specified employment purposes. Currently the law requires, when state summary criminal history information is furnished as a result of specified requests, and the information is to be used for employment, licensing, or certification purposes, that the requester furnish the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision.

This bill would:

1. Prohibit the DOJ from releasing the record of convictions that were dismissed pursuant to specified provisions.
2. Reduce that requirement for DOJ to report convictions for which registration as a sex offender is required from 10 years to the prior 7 years, or for which the person was incarcerated or on probation or parole within 7 years of the request be provided.
3. Require the board to furnish a copy of the Criminal Offender Record Information (CORI) to the subject of the request and would require the department to allow the subject a reasonable opportunity of not less than five days to challenge the accuracy or completeness of any matter contained in the CORI *prior* to consideration for licensure (rather than providing a copy *after* a denial has been issued).
4. Require the DOJ to make specified corrections prior to furnishing the information to the requester.

A copy of SB 1298 is provided immediately following this memo.

Staff Comments:

This measure is being brought to the committee to seek input on the policy of the measure. Board staff has significant policy concerns that this measure will negatively impact the board's ability to thoroughly review and consider criminal arrests and/or convictions of applicants and licensees. The policy being put forth in this measure runs contrary to the board's consumer protection mandate as well as efforts by the Legislature to strengthen the ability of programs within the DCA to more robustly protect consumers. Creating barriers or limiting information the board can consider when making a licensing decision and enforcement action will undo gains the board has made in this area and significantly undermine the board's consumer protection mandate.

Currently, board staff only denies applications for criminal conviction history when a nexus can be established between the crime and the qualifications, functions, or duties of the business or profession. As part of the licensing decision, mitigation and rehabilitation are considered.

The author states that a criminal conviction history review is a barrier to employment that negatively impacts Californians. Therefore, the author is seeking to remove barriers to these individuals' ability to gain employment. While this policy may be appropriate for some professionals, it does not appear appropriate for individuals working in health care related fields.

This measure is substantially similar to AB 2138(Chiu/Low), which the board voted to oppose at its May 3, 2018, meeting.

Support/Opposition:Support:

Californians for Safety and Justice

Opposition:

None on file

AMENDED IN SENATE APRIL 4, 2018

SENATE BILL

No. 1298

Introduced by Senator Skinner

February 16, 2018

An act to amend Sections 11105, 11121, 11126, and 13300 of, to add Section 11128 to, and to repeal and add Section 11122 of, *Section 11105* of the Penal Code, relating to criminal records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1298, as amended, Skinner. The Increasing Access to Employment Act.

~~(1) Existing~~

Existing law requires the Department of Justice to maintain state summary criminal history information, as defined, and requires the Attorney General to furnish state summary criminal history information to specified entities and ~~individuals if needed in the course of their duties~~; *individuals, including an authorized entity for employment, licensing, or certification relative to community care facilities, residential care facilities, and other specified health facilities. Existing law requires the department to provide the requester with every conviction of an offense rendered against the applicant, except for a conviction for which relief was granted to a victim of human trafficking, as specified.*

~~This bill would limit the information the department provides to specified requesters to more recent misdemeanors and felonies, generally within 5 years, and other information, as specified, including offenses for which registration as a sex offender is required. The bill would, for specified requesters, prohibit the disclosure of a conviction that has been dismissed, an arrest that was subsequently deemed a detention, or~~

~~an arrest that resulted in the successful completion of a diversion program, exoneration, or an arrest that has been sealed. The bill would specify what information is to be provided to a consumer reporting agency, as defined. *prohibit the department from releasing, for these purposes, the record of convictions that were dismissed pursuant to specified provisions.*~~

Existing law requires the department to provide an agency, organization, or individual, including, but not limited to, a cable corporation, in-home supportive services recipient, or property security organization, requesting the information for specified employment purposes with every conviction for which registration as a sex offender is required and, except as specified, every conviction that occurred within 10 years of the date of the request or for which the person was incarcerated within 10 years of the request for information.

This bill would require that only convictions from the prior 7 years or for which the person was incarcerated or on probation or parole within 7 years of the request be provided.

Existing law requires, when state summary criminal history information is furnished as a result of specified requests, and the information is to be used for employment, licensing, or certification purposes, that the requester furnish the information to the person to whom the information relates if the information is a basis for an adverse employment, licensing, or certification decision.

~~This bill would *instead* require the department to furnish a copy of the Criminal Offender Record Information (CORI) to the subject when a state or federal summary criminal history information is requested and the information is to be used for employment, licensing, or certification purposes of the request and would require the department to allow the subject a reasonable opportunity of not less than five days to challenge the accuracy or completeness of any matter contained in the CORI prior to furnishing a report to a third party. *The bill would require the department to make specified corrections prior to furnishing the information to the requester.*~~

~~Existing law requires a person who wants a copy of the his or her state summary criminal history information to obtain an application form furnished by the department and provide his or her fingerprints, in addition to other information specified by the department.~~

~~This bill would remove the requirement that a person submit fingerprints to obtain his or her state summary criminal history~~

~~information and would require only that information the department deems necessary.~~

~~(2) Existing law authorizes a person who desires to question the accuracy or completeness of any material matter contained in the record to submit a written request to the department and, if the accuracy of the source document is questioned, requires the department to forward it to the person or agency that furnished the questioned information. Existing law gives person or agency 30 days from the receipt of the written request for clarification, to review its information and forward to the department the results of the review. Under existing law, if the person or agency that created the source document concurs in the allegations of inaccuracy or incompleteness in the record, and finds that the error is material, it is required to correct its record and inform the department. Existing law provides the department 30 within which to inform the applicant of its correction of the record.~~

~~This bill would authorize an applicant to question the accuracy or completeness of any matter and, if the source document is questioned, would require the department, within 5 days, to verify the accuracy of the source document with the person or agency that furnished the questioned information. The bill would require the department to correct its record, destroy and purge the incorrect information if the department is unable to verify the accuracy or completeness of the source document and would require to destroy and purge the incorrect information. The bill would require the department to inform the applicant of the correction and destruction of the record within 10 days. The bill would also require a person or agency to which the incorrect record has been disseminated to, upon notification, correct the record accordingly and destroy and purge the incorrect information within 30 days. By increasing the requirements on local agencies that supply the source documents, this bill would impose a state-mandated local program.~~

~~(3) This bill would establish the Increasing Access to Employment Fund and would make funds available, upon appropriation, to the California Workforce Investment Board to administer a grant program aimed at improving rehabilitation, reentry, and employment and licensing outcomes for people with criminal convictions, as specified.~~

~~(4) Existing law requires the disclosure of local summary criminal history information by a local criminal justice agency to certain authorized entities and authorizes the disclosure of that information to other entities in specified circumstances.~~

~~The bill would require a local agency to disclose local summary criminal history information to the subject of the request or to an individual who is the subject of the record requested when needed in conjunction with an application to enter the United States or any foreign nation. By increasing the duties of local criminal justice agencies, this bill would impose a state-mandated local program. The bill would also reduce the entities to which local summary criminal history is required to be disclosed and to which that information is authorized to be disclosed, as specified.~~

~~Existing law prohibits a local criminal justice agency from releasing information under specified circumstances, including information concerning an arrest or detention followed by a dismissal or release without attempting to determine whether the individual was exonerated.~~

~~This bill would prohibit a local criminal justice agency from releasing information relating to convictions that were dismissed, arrests subsequently deemed a detention, arrests that resulted in the successful completion of a diversion program, exoneration, or arrests that were sealed. The bill would also limit the information that a local criminal justice agency can disclose to convictions for which registration as a sex offender is required, information concerning misdemeanor convictions that occurred before 2 years of the date of the request for information, and felony convictions that occurred before 5 years of the date of the request for information.~~

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

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

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

- 1 SECTION 1. (a) This act shall be known, and may be cited,
- 2 as the Increasing Access to Employment Act.
- 3 (b) It is the intent of the Legislature that criminal conviction
- 4 records not operate as an automatic bar to employment, licensure,
- 5 and certification. It is the intent of the Legislature not to change

1 or impact in any way the role or authority of a licensing board or
2 state agency to assess the fitness of applicants seeking licensure,
3 certification, and employment pursuant to provisions of the
4 Business and Professions Code, Health and Safety Code, Insurance
5 Code, and Welfare and Institutions Code, as applicable. This act
6 supercedes any statute, regulation, rule, or decision directing a
7 licensing board, state agency, employer, or any other applicable
8 person or entity, to obtain criminal history records in a manner
9 that conflicts with the intent of this act.

10 ~~(c) It is the intent of the Legislature to create the Increasing~~
11 ~~Access to Employment Fund for rehabilitation and reentry services~~
12 ~~to improve prospects for licensing, certification, and professional~~
13 ~~employment for people with criminal conviction records.~~
14 Recidivism is reduced when people with criminal convictions are
15 given the opportunity to secure employment and engage in a trade,
16 occupation, or profession. It is in the interest of public safety to
17 assist in the rehabilitation of criminal offenders by removing
18 impediments and restrictions on an offenders' ability to obtain
19 employment or engage in a trade, occupation, or profession when
20 those impediments and restrictions are based solely upon the
21 existence of a criminal record. Increasing opportunities for people
22 with criminal records improves the economic well-being of families
23 and communities and is a path to full employment in California.

24 *SEC. 2. Section 11105 of the Penal Code is amended to read:*

25 11105. (a) (1) The Department of Justice shall maintain state
26 summary criminal history information.

27 (2) As used in this section:

28 (A) "State summary criminal history information" means the
29 master record of information compiled by the Attorney General
30 pertaining to the identification and criminal history of a person,
31 ~~such as~~ *including* name, date of birth, physical description,
32 fingerprints, photographs, dates of arrests, arresting agencies and
33 booking numbers, charges, dispositions, sentencing information,
34 and similar data about the person.

35 (B) "State summary criminal history information" does not refer
36 to records and data compiled by criminal justice agencies other
37 than the Attorney General, nor does it refer to records of complaints
38 ~~to or to~~, investigations conducted by, or records of intelligence
39 information or security procedures of, the office of the Attorney
40 General and the Department of Justice.

- 1 (b) The Attorney General shall furnish state summary criminal
2 history information to the following, if needed in the course of
3 their duties, provided that when information is furnished to assist
4 an agency, officer, or official of state or local government, a public
5 utility, or any other entity, in fulfilling employment, certification,
6 or licensing duties, Chapter 1321 of the Statutes of 1974 and
7 Section 432.7 of the Labor Code shall apply:
- 8 (1) The courts of the state.
 - 9 (2) Peace officers of the state, as defined in Section 830.1,
10 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
11 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and
12 (b) of Section 830.5.
 - 13 (3) District attorneys of the state.
 - 14 (4) Prosecuting city attorneys or city prosecutors of a city within
15 the state.
 - 16 (5) City attorneys pursuing civil gang injunctions pursuant to
17 Section 186.22a, or drug abatement actions pursuant to Section
18 3479 or 3480 of the Civil Code, or Section 11571 of the Health
19 and Safety Code.
 - 20 (6) Probation officers of the state.
 - 21 (7) Parole officers of the state.
 - 22 (8) A public defender or attorney of record when representing
23 a person in proceedings upon a petition for a certificate of
24 rehabilitation and pardon pursuant to Section ~~4852.08~~. 4852.01.
 - 25 (9) A public defender or attorney of record when representing
26 a person in a criminal case, or a parole, mandatory supervision
27 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
28 postrelease community supervision revocation or revocation
29 extension proceeding, and if authorized access by statutory or
30 decisional law.
 - 31 (10) An agency, officer, or official of the state if the state
32 summary criminal history information is required to implement a
33 statute or regulation that expressly refers to specific criminal
34 conduct applicable to the subject person of the state summary
35 criminal history information, and contains requirements or
36 exclusions, or both, expressly based upon that specified criminal
37 conduct. The agency, officer, or official ~~of the state~~ authorized by
38 this paragraph to receive state summary criminal history
39 information may also transmit fingerprint images and related

1 information to the Department of Justice to be transmitted to the
2 Federal Bureau of Investigation.

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

18 (12) The subject of the state summary criminal history
19 information under procedures established under Article 5
20 (commencing with Section 11120).

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

28 (14) Health officers of a city, county, city and county, or district
29 when in the performance of their official duties enforcing Section
30 120175 of the Health and Safety Code.

31 (15) A managing or supervising correctional officer of a county
32 jail or other county correctional facility.

33 (16) A humane society, or society for the prevention of cruelty
34 to animals, for the specific purpose of complying with Section
35 14502 of the Corporations Code for the appointment of humane
36 officers.

37 (17) Local child support agencies established by Section 17304
38 of the Family Code. When a local child support agency closes a
39 support enforcement case containing state summary criminal
40 history information, the agency shall delete or purge from the file

1 and destroy any documents or information concerning or arising
2 from offenses for or of which the parent has been arrested, charged,
3 or convicted, other than for offenses related to the parent's having
4 failed to provide support for minor children, consistent with the
5 requirements of Section 17531 of the Family Code.

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

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

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

1 (21) An officer providing conservatorship investigations
2 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
3 Institutions Code.

4 (22) A court investigator providing investigations or reviews
5 in conservatorships pursuant to Section 1826, 1850, 1851, or
6 2250.6 of the Probate Code.

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

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

11 (25) A public agency described in subdivision (b) of Section
12 15975 of the Government Code, for the purpose of oversight and
13 enforcement policies with respect to its contracted providers.

14 (26) (A) A state entity, or its designee, that receives federal tax
15 information. A state entity or its designee that is authorized by this
16 paragraph to receive state summary criminal history information
17 also may transmit fingerprint images and related information to
18 the Department of Justice to be transmitted to the Federal Bureau
19 of Investigation for the purpose of the state entity or its designee
20 obtaining federal level criminal offender record information from
21 the Department of Justice. This information shall be used only for
22 the purposes set forth in Section 1044 of the Government Code.

23 (B) For purposes of this paragraph, “federal tax information,”
24 “state entity” and “designee” are as defined in paragraphs (1), (2),
25 and (3), respectively, of subdivision (f) of Section 1044 of the
26 Government Code.

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

36 (1) A public utility, as defined in Section 216 of the Public
37 Utilities Code, that operates a nuclear energy facility when access
38 is needed in order to assist in employing persons to work at the
39 facility, provided that, if the Attorney General supplies the data,

1 he or she shall furnish a copy of the data to the person to whom
2 the data relates.

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

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

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

8 (5) To ~~a public officers, officer, other than a peace officers,~~
9 ~~officer, of the United States, other states, or possessions or~~
10 ~~territories another state, or a possession or territory of the United~~
11 ~~States, provided that access to records similar to state summary~~
12 ~~criminal history information is expressly authorized by a statute~~
13 ~~of the United States, other states, or possessions or territories the~~
14 ~~other state, or the possession or territory of the United States if~~
15 ~~the information is needed for the performance of their official~~
16 ~~duties.~~

17 (6) To a person ~~when~~ *if* disclosure is requested by a probation,
18 parole, or peace officer with the consent of the subject of the state
19 summary criminal history information and for purposes of
20 furthering the rehabilitation of the subject.

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

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

25 (9) To an individual who is the subject of the record requested
26 if needed in conjunction with an application to enter the United
27 States or a foreign nation.

28 (10) (A) (i) A public utility, as defined in Section 216 of the
29 Public Utilities Code, or a cable corporation as defined in
30 subparagraph (B), if receipt of *state summary* criminal history
31 information is needed in order to assist in employing current or
32 prospective employees, contract employees, or subcontract
33 employees who, in the course of their employment, may be seeking
34 entrance to private residences or adjacent grounds. The information
35 provided shall be limited to the record of convictions and arrests
36 for which the person is released on bail or on his or her own
37 recognizance pending trial.

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

1 (iii) State summary criminal history information is confidential
2 and the receiving public utility or cable corporation shall not
3 disclose its contents, other than for the purpose for which it was
4 acquired. The state summary criminal history information in the
5 possession of the public utility or cable corporation and all copies
6 made from it shall be destroyed not more than 30 days after
7 employment or promotion or transfer is denied or granted, except
8 for those cases where a current or prospective employee is out on
9 bail or on his or her own recognizance pending trial, in which case
10 the state summary criminal history information and all copies shall
11 be destroyed not more than 30 days after the case is resolved.

12 (iv) A violation of this paragraph is a misdemeanor, and shall
13 give the current or prospective employee who is injured by the
14 violation a cause of action against the public utility or cable
15 corporation to recover damages proximately caused by the
16 violations. A public utility's or cable corporation's request for
17 state summary criminal history information for purposes of
18 employing current or prospective employees who may be seeking
19 entrance to private residences or adjacent grounds in the course
20 of their employment shall be deemed a "compelling need" as
21 required to be shown in this subdivision.

22 (v) This section shall not be construed as imposing a duty upon
23 public utilities or cable corporations to request state summary
24 criminal history information on current or prospective employees.

25 (B) For purposes of this paragraph, "cable corporation" means
26 a corporation or firm that transmits or provides television,
27 computer, or telephone services by cable, digital, fiber optic,
28 satellite, or comparable technology to subscribers for a fee.

29 (C) Requests for federal level criminal history information
30 received by the Department of Justice from entities authorized
31 pursuant to subparagraph (A) shall be forwarded to the Federal
32 Bureau of Investigation by the Department of Justice. Federal level
33 criminal history information received or compiled by the
34 Department of Justice may then be disseminated to the entities
35 referenced in subparagraph (A), as authorized by law.

36 (11) To a campus of the California State University or the
37 University of California, or a four-year college or university
38 accredited by a regional accreditation organization approved by
39 the United States Department of Education, if needed in
40 conjunction with an application for admission by a convicted felon

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

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

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

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

1 improvements to the systems from which the information is
2 obtained upon appropriation by the Legislature.

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

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

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

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

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

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

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

37 (A) Every conviction rendered against the applicant.

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

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

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

8 (D) Every successful diversion.

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

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

14 (G) Sentencing information, if present in the department's
15 records at the time of the response.

16 (I) (1) This subdivision shall apply whenever state or federal
17 summary criminal history information is furnished by the
18 Department of Justice as the result of an application by a criminal
19 justice agency or organization as defined in Section 13101, and
20 the information is to be used for criminal justice employment,
21 licensing, or certification purposes.

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

26 (A) Every conviction rendered against the applicant.

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

31 (C) Every arrest for an offense for which the records of the
32 Department of Justice do not contain a disposition or ~~which~~ *that*
33 did not result in a conviction, provided that the Department of
34 Justice first makes a genuine effort to determine the disposition
35 of the arrest. However, information concerning an arrest shall not
36 be disclosed if the records of the Department of Justice ~~indicate~~
37 *indicate*, or if the genuine effort ~~reveals~~ *reveals*, that the subject
38 was exonerated, successfully completed a diversion or deferred
39 entry of judgment program, or the arrest was deemed a detention,
40 or the subject was granted relief pursuant to Section 851.91.

1 (D) Every date and agency name associated with all retained
2 peace officer or nonsworn law enforcement agency employee
3 preemployment criminal offender record information search
4 requests.

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

6 (F) Sentencing information, if present in the department's
7 records at the time of the response.

8 (m) (1) This subdivision shall apply whenever state or federal
9 summary criminal history information is furnished by the
10 Department of Justice as the result of an application by an
11 authorized agency or organization pursuant to Section 1522,
12 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
13 a statute that incorporates the criteria of any of those sections or
14 this subdivision by reference, and the information is to be used for
15 employment, licensing, or certification purposes.

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

20 (A) Every conviction of an offense rendered against the
21 applicant, except a conviction for which relief has been granted
22 pursuant to Section ~~1203.49~~: *1203.4, 1203.4a, 1203.41, 1203.42,*
23 *1203.45, 1203.49, or 1170.9.*

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

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

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

36 (E) Sentencing information, if present in the department's
37 records at the time of the response.

38 (3) Notwithstanding the requirements of the sections referenced
39 in paragraph ~~(1)~~ of this subdivision, *(1)*, the Department of Justice
40 shall not disseminate information about an arrest subsequently

1 deemed a detention or an arrest that resulted in the successful
2 completion of a diversion program, exoneration, or a grant of relief
3 pursuant to Section 851.91.

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

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

11 (B) Section 11105.3 or 11105.4.

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

13 (D) A statute that incorporates the criteria of any of the statutory
14 provisions listed in subparagraph (A), (B), or (C), or of this
15 subdivision, by reference.

16 (2) With the exception of applications submitted by
17 transportation companies authorized pursuant to Section 11105.3,
18 and 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, except a conviction for which relief has
23 been granted pursuant to Section ~~1203.49~~, 1203.4, 1203.4a,
24 1203.41, 1203.42, 1203.45, 1203.49, or 1170.9, rendered against
25 the applicant for a violation or attempted violation of an offense
26 specified in subdivision (a) of Section 15660 of the Welfare and
27 Institutions Code. However, with the exception of those offenses
28 for which registration is required pursuant to Section 290, the
29 Department of Justice shall not disseminate information pursuant
30 to this subdivision unless the conviction occurred within ~~10~~ seven
31 years of the date of the agency's request for information or the
32 conviction is over ~~10~~ seven years old but the subject of the request
33 was incarcerated *or on probation or parole* within ~~10~~ seven years
34 of the agency's request for information.

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

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

1 (D) Sentencing information, if present in the department's
2 records at the time of the response.

3 (o) (1) This subdivision shall apply whenever state or federal
4 summary criminal history information is furnished by the
5 Department of Justice as the result of an application by an
6 authorized agency or organization pursuant to Section 379 or 550
7 of the Financial Code, or a statute that incorporates the criteria of
8 either of those sections or this subdivision by reference, and the
9 information is to be used for employment, licensing, or certification
10 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 for a
16 violation or attempted violation of an offense specified in Section
17 550 of the Financial Code, except a conviction for which relief
18 has been granted pursuant to Section ~~1203.49~~, *1203.4*, *1203.4a*,
19 *1203.41*, *1203.42*, *1203.45*, *1203.49*, or *1170.9*.

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

25 (C) Sentencing information, if present in the department's
26 records at the time of the response.

27 (p) (1) This subdivision shall apply whenever state or federal
28 criminal history information is furnished by the Department of
29 Justice as the result of an application by an agency, organization,
30 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
31 by a transportation company authorized pursuant to Section
32 11105.3, or a statute that incorporates the criteria of that section
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 law, whenever state summary
36 criminal history information is initially furnished pursuant to
37 paragraph (1), the Department of Justice shall disseminate the
38 following information:

39 (A) Every conviction rendered against the applicant, except a
40 conviction for which relief has been granted pursuant to Section

1 ~~1203.49. 1203.4, 1203.4a, 1203.41, 1203.42, 1203.45, 1203.49,~~
2 ~~or 1170.9.~~

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

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

8 (D) Sentencing information, if present in the department's
9 records at the time of the response.

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

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

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

23 (t) Whenever state or federal summary criminal history
24 information is furnished by the Department of Justice as the result
25 of an application by an authorized agency, organization, or
26 individual defined in subdivisions (k) to (p), inclusive, and the
27 information is to be used for employment, licensing, or certification
28 purposes, ~~the authorized agency, organization, or individual shall~~
29 ~~expeditiously furnish a copy of the information to the person to~~
30 ~~whom the information relates if the information is a basis for an~~
31 ~~adverse employment, licensing, or certification decision. When~~
32 ~~furnished other than in person, the copy shall be delivered to the~~
33 ~~last contact information provided by the applicant.~~ *purposes, the*
34 *department shall first furnish a copy of the Criminal Offender*
35 *Record Information (CORI) to the subject of the request. After*
36 *furnishing a copy to the subject, but prior to furnishing a report*
37 *to a third party, the department shall allow the subject a reasonable*
38 *opportunity of not less than five days to challenge the accuracy*
39 *or completeness of any matter contained in the CORI. The*
40 *department shall make the necessary corrections pursuant to*

1 *Section 11126 prior to furnishing the information to the requesting*
2 *agency, organization, or individual.*

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 16, 2018. (JR11)**

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