

TITL: Compendium of State Privacy and Security Legislation: 1997
Overview - CALIFORNIA; 291 Revised Statutes Annotated

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ANNOTATION: This is a 1997 overview of State law pertinent to the
privacy and security of criminal justice information.

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Penal Code

§ 291. School employees; arrest for sex offense; notice to school authorities

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 or in subdivision 1 of Section 261 of any school employee, shall do either of the following:

(1) If such school employee is a teacher in any of the public schools of this state, he shall immediately notify by telephone the superintendent of schools of the school district employing such teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein such person is employed. Upon receipt of such notice, the county superintendent of schools shall immediately notify the governing board of the school district employing such person.

(2) If such school employee is a nonteacher in any of the public schools of this state, he shall immediately notify by telephone the superintendent of schools of the school district employing such nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing such person.

§ 291.1. Teachers; notice of arrest to private school authorities

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 of any person who is employed as a teacher in any private school of this state, shall immediately give written notice of the arrest to the private school authorities employing the teacher. The sheriff or chief of police shall immediately notify by telephone the private school authorities employing such teacher.

§ 291.5. Teacher or instructor employed in community college district; notice of arrest

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 or in subdivision (1) of Section 261 of any teacher or instructor employed in any community college district shall immediately notify by telephone the superintendent of the community college district employing the teacher or instructor and shall immediately give written notice of the arrest to the Office of the Chancellor of the California Community Colleges. Upon receipt of such notice, the district superintendent shall immediately notify the governing board of the community college district employing the person.

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§ 502. Unauthorized access to computers, computer systems and computer data

(a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system which provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(5) "Computer system" means a device or collection of devices, including support devices and including calculators which are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(c) Except as provided in subdivision (b), any person who commits any of the following acts is guilty of a public offense:

(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

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- (3) Knowingly and without permission uses or causes to be used computer services.
- (4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(d) (1) Any person who violates any of the provisions of paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(2) Any person who violates paragraph (8) of subdivision (c) is punishable as follows:

(A) For the first violation which does not result in injury, and where the value of the computer services used does not exceed four hundred dollars (\$400), by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation which results in a victim expenditure in an amount greater than five thousand dollars (\$5,000) or in an injury, or if the value of the computer services used exceeds four hundred dollars (\$400), or for any second or subsequent violation, by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(3) Any person who violates paragraph (6), (7), or (8) of subdivision (c) is punishable as follows:

(A) For a first violation which does not result in injury, an infraction punishable by a fine not exceeding two hundred fifty dollars (\$250).

(B) For any violation which results in a victim expenditure in an amount not greater than five thousand dollars (\$5,000), or for a second or subsequent violation, by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(C) For any violation which results in a victim expenditure in an amount greater than five thousand dollars (\$5,000), by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(e) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(f) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(g) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

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(g) Any computer, computer system, computer network or any software or data owned by the defendant, which is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture as specified in Section 502.01.

(h) (1) Subdivision (c) does not apply to any person who accesses his or her employer's computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(2) Paragraph (3) of subdivision (c) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (4) of subdivision (b), which are used do not exceed an accumulated total of one hundred dollars (\$100).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

(Amended by Stats. 1989, c. 1076, § 1; Stats. 1989, c. 1110, § 1; Stats. 1989, c. 1367, § 1.)

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§ 851.8. Sealing and destruction of arrest records; determination of factual innocence

(a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the district attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each such agency, person, or entity within the State of California receiving such a request shall destroy its records of the arrest and such request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed,

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then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal or justice court which would have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is

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factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the district attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of such charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which he was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) which are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon such records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred.

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However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petition under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

(o)(1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate department of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a district court of appeal. A judgment of a district court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate department of the superior court, shall be appealed by the Attorney General.

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§ 851.85. Motion to seal records on acquittal if person appears to judge to be factually innocent; rights of defendant under order

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court

shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

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California Penal Code

Title 1

Chapter 1

Investigation, Identification and Information Responsibilities of Department of Justice

Article 2.5: Criminal Record Dissemination

11075. Criminal offender record information

(a) As used in this article, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

(b) Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto.

11076. Dissemination to authorized agencies

Criminal offender record information shall be disseminated, whether directly or through any intermediary, only to such agencies as are, or may subsequently be authorized access to such records by statute.

11077. Attorney General; duties

The Attorney General is responsible for the security of criminal offender record information. To this end, he shall:

(a) Establish regulations to assure the security of criminal offender record information from unauthorized disclosures at all levels of operation in this state.

(b) Establish regulations to assure that such information shall be disseminated only in situations in which it is demonstrably required for the performance of an agency's or official's functions.

(c) Coordinate such activities with those of any interstate systems for the exchange of criminal offender record information.

(d) Cause to be initiated for employees of all agencies that maintain, receive, or are eligible to maintain or receive, criminal offender record information a continuing educational program in the proper use and control of criminal offender record information.

(e) Establish such regulations as he finds appropriate to carry out his functions under this article.

11078. Listing of agencies to whom information released or communicated

Each agency holding or receiving criminal offender record information in a computerized system shall maintain, for such period as is found by the Attorney General to be appropriate, a listing of the agencies to which it has released or communicated such information.

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11079. Investigations; cooperation by agencies

The Attorney General may conduct such inquiries and investigations as he finds appropriate to carry out functions under this article. He may for this purpose direct any agency that maintains, or has received, or that is eligible to maintain or receive criminal offender records to produce for inspection statistical data, reports, and other information concerning the storage and dissemination of criminal offender record information. Each such agency is authorized and directed to provide such data, reports, and other information.

11080. Right of access to information authorized by other provisions of law not affected

Nothing in this article shall be construed to affect the right of access of any person or public agency to individual criminal offender record information that is authorized by any other provision of law.

§ 11080.5. Federal parolees residing or domiciled in city or county; request for information by chief of police or sheriff

A chief of police of a city or the sheriff of a county shall be authorized to request and receive relevant information concerning persons when on parole who are or may be residing or temporarily domiciled in that city or county and who have been convicted of a federal crime which could have been prosecuted as a felony under the penal provisions of this state.

11081. No access to information unless otherwise authorized by law

Nothing in this article shall be construed to authorize access of any person or public agency to individual criminal offender record information unless such access is otherwise authorized by law.

Article 3

Criminal Identification and Statistics

§ 11105. State summary criminal history information; maintenance; furnishing to authorized persons; fingerprints on file without criminal history; fees

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

(2) As used in this section:

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

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

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

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.81.

(3) District attorneys of the state.

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

(5) Probation officers of the state.

(6) Parole officers of the state.

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

(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4.

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

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

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(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 607f of the Civil Code for the appointment of level 1 humane officers.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

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

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

(3) To a peace officer of another country.

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

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

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

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

(9) Any public utility as defined in Section 216 of the Public Utilities Code, if access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

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

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

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

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification

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purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588¹ of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

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

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

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

(Amended by Stats.1993, c. 1269 (A.B.1972), § 12; Stats.1993, c. 1270 (S.B.947), § 3; Stats.1995, c. 806 (A.B.1571), § 2.)

¹ Repealed.

§ 11105.01. State summary criminal history information; furnishing to California State Lottery officers and directors

In addition to furnishing state summary criminal history information to the persons and entities set forth in Section 11105 and subject to the requirements and conditions set forth in that section, the Attorney General shall furnish state summary criminal history information to the Director, the Deputy Director for Security, and lottery security officers of the California State Lottery.

11106.1. Any system of microphotography, optical disk, or reproduction by other techniques that do not permit additions, deletions, or changes to the original document, may be used by the Department of Justice as a photographic reproduction process to record some or all instruments, papers, photographs, and notices that are required or permitted by law to be recorded or filed. All storage medium shall comply with minimum standards of quality approved by the National Institute of Standards and Technology.

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§ 11105.1. State summary criminal history information; persons entitled to receive

(a) The following persons shall be furnished with state summary criminal history information when needed in the course of their duties:

(1) The director of a state hospital or other treatment facility to which a person is committed for treatment under Sections 1026 and 1370 of the Penal Code, or Section 5250, if committed for being dangerous to others, or Section 5300, or former Section 6316 or 6321, of the Welfare and Institutions Code.

(2) The community program director or the director's designee under any of the following conditions:

(A) When ordered to evaluate a defendant for the court under paragraph (2) of subdivision (a) of Section 1370 and subdivision (b) of Section 1026 of the Penal Code, or paragraph (2) of subdivision (a) of former Section 6316 of the Welfare and Institutions Code.

(B) When ordered to provide outpatient treatment and supervision services under Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(C) When a patient is committed for being dangerous to others under Section 5250 of the Welfare and Institutions Code.

(D) When the director or the director's designee provides evaluation, supervision, or treatment for a person under Section 2964 or 2972.

(3) The officer providing conservatorship investigation under Section 5354 of the Welfare and Institutions Code in cases where referral for conservatorship is made while the proposed conservatee is being treated under Section 1026 or 1370 of the Penal Code or Section 5250, if committed for being dangerous to others, or Section 5300, or former Section 6316 or 6321, of the Welfare and Institutions Code.

(b) In all instances pursuant to subdivision (a), the criminal history record shall be transmitted by the court with the request for evaluation or during the conservatorship investigation or with the order committing the person to a treatment facility or approving outpatient status, except that the director of a state hospital, the county mental health director, and the officer providing conservatorship investigation may receive the state summary criminal history information from the law enforcement agency that referred the person for evaluation and treatment under Section 5150 of the Welfare and Institutions Code if the person has been subsequently committed for being dangerous to others under Section 5250 of the Welfare and Institutions Code. Information obtained under this subdivision shall not be included in any document which will become part of a public record.

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§ 11105.3. Record of conviction involving sex crimes, drug crimes, or crimes of violence; availability to employer or human resource agency for applicants for positions with supervisory or disciplinary power over minors

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

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

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

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

(e) As used in this section, "employer" means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

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

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

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

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

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

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

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(Amended by Stats.1992, c. 163 (A.B.2641), § 111; Stats.1992, c. 1227 (A.B.3773), § 1; Stats.1993, c. 219 (A.B.1600), § 220; Stats.1993, c. 610 (A.B.6), § 25, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 28, eff. Oct. 1, 1993; Stats.1994, c. 1263 (A.B.1328), § 5; Stats.1994, c. 1264 (A.B.3738), § 1; Stats.1994, c. 1269 (A.B.2208), § 61.8.)

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§ 11105.4. Contract or proprietary security organizations; criminal history information concerning prospective employees

(a) Notwithstanding any other provision of law, a contract or proprietary security organization may request the following criminal history information concerning its prospective employees:

(1) Any criminal history information that a human resource agency may request pursuant to Section 11105.3, except criminal history information described in subdivision (c) of that section.

(2) Any criminal history information that a bank may request pursuant to Section 777.5 of the Financial Code.

(b) The Department of Justice shall promulgate regulations to assure that criminal record information is not released to persons or entities not authorized to receive the information under this section.

(c) Any criminal history information obtained pursuant to this section shall be subject to the same requirements and conditions that the information is subject to when obtained by a human resource agency or a bank.

(d) The Legislature finds that contract security organizations and private security organizations often provide security service for financial institutions and human resource agencies, and, consequently, they have the same need for criminal history information as do those entities. Therefore, the Legislature intends to provide authority for contract security organizations and proprietary security organizations to obtain criminal history information to the extent that financial institutions and human resource agencies have that authority concerning their own employees.

(e) As used in this section, "contract security organization" means a person, business, or organization licensed to provide services as a private patrol operator, as defined in subdivision (b) of Section 7521 of the Business and Professions Code.

As used in this section, "proprietary security organization" means an organization within a business entity that has the primary responsibility of protecting the employees and property of its employer, and which allocates a substantial part of its annual budget to providing security and protective services for its employer, including providing qualifying and in-service training to members of the organization.

(f) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

§ 11105.5. Notice to officers and agents that record of minor or person acquitted who was factually innocent has been sealed

When the Bureau of Criminal Identification and Investigation receives a report that the record of a person has been sealed under Section 851.7, 851.8, or 1203.45 of the Penal Code, it shall send notice of that fact to all officers and agencies that it had previously notified of the arrest or other proceedings against the person.

(Added by Stats.1965, c. 1910, p. 4422, § 2. Amended by Stats.1967, c. 1373, p. 3224, § 3; Stats.1975, c. 904, p. 2002, § 2.)

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§ 11107. Reports; misdemeanors and felonies; sexual exploitation of children

Each sheriff or police chief executive shall furnish all of the following information to the Department of Justice on standard forms approved by the department:

(a) Daily reports of those misdemeanors and felonies that are required to be reported by the Attorney General including but not limited to, forgery, fraud-bunco, bombings, receiving or selling stolen property, safe and commercial burglary, grand theft, child abuse, homicide, threats, and offenses involving lost, stolen, found, pledged or pawned property.

• • • (b) Daily reports of any instance of the suspected sexual exploitation of a child. As used in this subdivision "sexual exploitation" means any offense where a person engages a minor to engage in acts of prostitution or the preparation of sexually explicit material involving sexual conduct as defined in subdivision (b) of Section 311.3; or any conduct proscribed by law where it appears that there was an intention to sexually exploit a minor for any purpose or to promote or to encourage child molestation.

The reports required by this section shall describe the nature and character of each such crime and note all particular circumstances • • • thereof and include all additional or supplemental data. The Attorney General may also require that the report shall indicate whether or not the submitting agency considers the information to be confidential because it was compiled for the purpose of a criminal investigation of suspected criminal activities. The term "criminal investigation" includes the gathering and maintenance of information pertaining to suspected criminal activity.

Article 4

Criminal Records

§ 11115. Arrests; report on disposition of case

In any case in which a sheriff, police department or other law enforcement agency makes an arrest and transmits a report of the arrest to the Department of Justice or to the Federal Bureau of Investigation, it shall be the duty of such law enforcement agency to furnish a disposition report to such agencies whenever the arrested person is transferred to the custody of another agency or is released without having a complaint or accusation filed with a court. The disposition report in such cases shall be furnished to the appropriate agencies within 30 days of release or transfer to another agency.

If either of the following dispositions is made, the disposition report shall so state:

(a) "Arrested for intoxication and released," when the arrested party is released pursuant to paragraph (2) of subdivision (b) of Section 849.

(b) "Detention only," when the detained party is released pursuant to paragraph (1) of subdivision (b) of Section 849 or issued a certificate pursuant to subdivision (b) of Section 851.6. In such cases the report shall state the specific reason for such release, indicating that there was no ground for making a criminal complaint because (1) further investigation exonerated the arrested party, (2) the complainant withdrew the complaint, (3) further investigation appeared necessary before prosecution could be initiated, (4) the ascertainable evidence was insufficient to proceed further, (5) the admissible or adducible evidence was insufficient to proceed further, or (6) other appropriate explanation for release.

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§ 11116.5. Use of dismissal

Any dismissal and reason therefor provided by Section 11115 or 13151.1 may be used by the person subject to the disposition as an answer to any question regarding his arrest or detention history or any question regarding the outcome of a criminal proceeding against him.

(Added by Stats.1967, c. 1519, p. 3619, § 4. Amended by Stats.1978, c. 152, p. 376, § 4, eff. May 24, 1978, operative July 1, 1978.)

§ 11116.6. Entry of dispositions on records

The dispositions provided by Sections 11115 and 13151.1 must be entered on all appropriate records of the party arrested, detained, or against whom criminal proceedings are brought.

(Added by Stats.1967, c. 1519, p. 3619, § 5. Amended by Stats.1978, c. 152, p. 377, § 5, eff. May 24, 1978, operative July 1, 1978.)

§ 11116.7. Certificate of disposition; request by defendant; changes

Whenever an accusatory pleading is filed in any court of this state alleging a public offense for which a defendant may be punished by incarceration, for a period in excess of 90 days, the court shall furnish upon request of the defendant named therein a certificate of disposition which describes the disposition of the accusatory pleading in that court when such disposition is one described in Section 13151.1. The certificate of disposition shall be signed by the judge, shall substantially conform with the requirements of Section 11116.8, and the seal of the court shall be affixed thereto.

In the event that the initial disposition of the accusatory pleading is changed, a new disposition certificate showing the changed disposition shall be issued by the court changing the same upon request of the defendant or his counsel of record.

§ 11116.8. Certificates of disposition; description and disposition of charges in pleadings

The certificate of disposition provided by Section 11116.7 shall describe the charge or charges set forth in the original and any amended accusatory pleading, together with the disposition of each charge in the original and any amended accusatory pleading.

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§ 11116.9. Additional copies of disposition; fees

The clerk of the court in which the disposition is made shall provide the defendant or his counsel of record with additional certified copies of the disposition certificate upon the payment of the fees provided by law for certified copies of court records.

(Added by Stats.1972, c. 1279, p. 2542, § 3.)

§ 11116.10. Notice of final disposition to victim or witness of crime

(a) Upon the request of a victim or a witness of a crime, the prosecuting attorney shall, within 60 days of the final disposition of the case, inform the victim or witness by letter of such final disposition. Such notice shall state the information described in Section 13151.1.

(b) As used in this section, "victim" means any person alleged or found, upon the record, to have sustained physical or financial injury to person or property as a direct result of the crime charged.

(c) As used in this section, "witness" means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

(d) As used in this section, "final disposition," means an ultimate termination of the case at the trial level including, but not limited to, dismissal, acquittal, or imposition of sentence by the court, or a decision by the prosecuting attorney, for whatever reason, not to file the case.

(e) Subdivision (a) does not apply in any case where the offender or alleged offender is a minor unless the minor has been declared not a fit and proper subject to be dealt with under the juvenile court law.

(f) This section shall not apply to any case in which a disposition was made prior to the effective date of this section.

§ 11117. Procedures and forms; admissibility in civil actions

The Department of Justice shall prescribe and furnish the procedures and forms to be used for the disposition and other reports required in this article and in Sections 13151 and 13152. The depart-

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ment shall add the reports received to all appropriate criminal records.

Neither the reports required in this article nor those required in Sections 13151 and 13152 shall be admissible in evidence in any civil action.

(Added by Stats.1961, c. 1025, p. 2710, § 1. Amended by Stats.1967, c. 1519, p. 3619, § 6; Stats.1972, c. 1377, p. 2841, § 86; Stats.1978, c. 152, p. 377, § 9, eff. May 24, 1978, operative July 1, 1978.)

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Article 5

Examination of Records

11120. Record defined

As used in this article, "record" with respect to any person means the state summary criminal history information as defined in subdivision (a) of Section 11105, maintained under such person's name by the Department of Justice.

11121. Purpose

It is the function and intent of this article to afford persons concerning whom a record is maintained in the files of the bureau an opportunity to obtain a copy of the record compiled from such files, and to refute any erroneous or inaccurate information contained therein.

Added by Stats.1971, c. 1439, Section 1. Amended by Stats.1980, c. 939, Section 1.

11122. Submission of application; fee

Any person desiring a copy of the record relating to himself shall obtain an application form furnished by the department which shall require his fingerprints in addition to such other information as the department shall specify. Applications may be obtained from police departments, sheriff departments, or the Department of Justice. The fingerprinting agency may fix a reasonable fee for affixing the applicant's fingerprints to the form, and shall retain such fee.

Added by Stats.1971, c. 1439, Section 1. Amended by Stats.1972, c. 1377, Section 86.2; Stats.1980, c. 939, Section 2.

11123. Submission of application; fee

The applicant shall submit the completed application directly to the department. The application shall be accompanied by a fee not to exceed twenty-five dollars (\$25) that the department determines equals the costs of processing the application and providing a copy of the record to the applicant. All fees received by the department under this section are hereby appropriated without regard to fiscal years for the support of the Department of Justice in addition to such other funds as may be appropriated therefor by the Legislature. Any request for waiver of fee shall accompany the original request for the record and shall include a claim and proof of indigency.

Added by Stats.1971, c. 1439, Section 1. Amended by Stats.1972, c. 1377, Section 86.3; Stats.1980, c. 939, Section 3.

11124. Determination of existence of record; copy of record or notice of no record; delivery

When an application is received by the department, the department shall determine whether a record pertaining to the applicant is maintained. If such record is maintained, the department shall furnish a copy of the record to the applicant or to an individual designated by the applicant. If no such record is maintained, the department shall so notify the applicant or an individual designated by the applicant. Delivery of the copy of the record, or notice of no record, may be by mail or other appropriate means agreed to by the applicant and the department.

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§ 11125. Unauthorized requirement or request to furnish record or notice of no record; violation.

No person or agency shall require or request another person to furnish a copy of a record or notification that a record exists or does not exist, as provided in Section 11124. A violation of this section is a misdemeanor. (Added by Stats.1980, c. 939, § 6. Amended by Stats.1992, c. 1227 (A.B.3773), § 2.)

Former § 11125 was repealed by Stats.1980, c. 939, § 5.

§ 11126. Correction of record; written request for clarification; notice of correction of record; administrative adjudication; judicial review

(a) If the applicant desires to question the accuracy or completeness of any material matter contained in the record, he or she may submit a written request to the department in a form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, and its materiality, and shall specify any proof or corroboration available. Upon receipt of the request, the department shall review the record to determine if the information correctly reflects the source document, and if it does not, the department shall make the necessary corrections and shall provide the applicant with a corrected copy of the record. If the accuracy of the source document is questioned, the department shall forward it to the person or agency which furnished the questioned information. This person or agency shall, within 30 days of receipt of the written request for clarification, review its information and forward to the department the results of the review.

(b) If the agency concurs in the allegations of inaccuracy or incompleteness in the record, and finds that the error is material, it shall correct its record and shall so inform the department, which shall correct the record accordingly. The department shall inform the applicant of its correction of the record under this subdivision within 30 days. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that the notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of the correction of the record, and the applicant shall be informed that the notification has been given.

(c) If * * * the department or the agency denies the allegations of inaccuracy or incompleteness in the record, the matter shall be referred for administrative adjudication in accordance with Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2 of the Government Code for a determination of whether inaccuracy or incompleteness exists in the record. The * * * department shall be the respondent in the hearing. If a material inaccuracy or incompleteness is found in any record, the department and the agency in charge of that record shall be directed to correct it accordingly * * *. The department and the agency shall notify all persons and agencies to which they have disseminated the incorrect record in the past 90 days of the correction of the record, and the applicant shall be informed that the notification has been given. The department and the agency shall also notify those persons or agencies to which the incorrect record has been disseminated which have been specifically requested by the applicant to receive notification of the correction of the record, and the applicant shall be informed that the notification has been given. Judicial review of the decision shall be governed by Section 11523 of the Government Code. The applicant shall be informed of the decision within 30 days of its issuance in accordance with Section 11518 of the Government Code. (Added by Stats.1971, c. 1439, § 1. Amended by Stats.1972, c. 1377, § 86.6; Stats.1980, c. 939, § 7; Stats.1992, c. 1227 (A.B.3773), § 3.)

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Article 6

Unlawful Furnishing of State Summary Criminal History Information

11140. Definitions

(a) "Record" means the state summary criminal history information as defined in subdivision (a) of Section 11105, or a copy thereof, maintained under a person's name by the Department of Justice.

(b) "A person authorized by law to receive a record" means any person or public agency authorized by a court, statute, or decisional law to receive a record.

11141. Employee of justice department furnishing record or information to unauthorized person; misdemeanor

Any employee of the Department of Justice who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor. -

11142. Authorized person furnishing record or information to unauthorized person; misdemeanor

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

11143. Unauthorized person receiving record or information; misdemeanor

Any person, except those specifically referred to in Section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor.

11144. Dissemination of statistical or research information from a record

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

(b) It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of a crime.

(c) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

* * *

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CHAPTER 15. NATIONAL SEARCH OF CRIMINAL RECORDS [NEW]

See.

- 11145. Contracts; independent vendors.
- 11146. Application of chapter.
- 11147. Applicants; information required; perjury.
- 11148. Vendors; qualifications; cost limitation.
- 11149. Applications submitted to vendor; results of fingerprint checks included.
- 11149.1 Exemption from provisions prohibiting search.
- 11149.2 Applicants; fee for search.
- 11149.3 Furnishing information obtained from record to unauthorized person; punishment.
- 11149.4 Disclosure of confidential information; civil action; exemplary damages; costs.

Chapter 15 was added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.

REPEAL

Chapter 15 shall remain operative only until the Federal Bureau of Investigation reinstates its national fingerprint services. See note under § 11145.

§ 11145. Contracts; independent vendors

In lieu of a national check of fingerprint records conducted by the Federal Bureau of Investigation through the California Department of Justice, state agencies shall contract with an independent vendor to conduct a national search of the individuals' criminal records, as provided in this chapter.
(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

1982 Legislation.

Sections 1 and 3 of Stats.1982, c. 1222, p. —, provide:
"Sec. 1. The Legislature reaffirms its commitment to protecting the youth of California by searching, on a national basis, the criminal records of prospective state and local government employees who will be working with children.

"The Legislature recognizes that this national search has, until recently, been conducted using the services of the Federal Bureau of Investigation and that these services have been temporarily suspended by the Reagan administration.

Therefore, the Legislature declares that an alternative system for conducting a national search of criminal records must be established and used until the Federal Bureau of Investigation once again provides such services.

"Sec. 3. The provisions contained in this act shall remain operative only until the Federal Bureau of Investigation reinstates its national fingerprint services."

§ 11146. Application of chapter

This chapter applies to:

- (a) The California Commission for Teacher Preparation and Licensing, in licensing of all teaching and services credential applicants, pursuant to Section 44341 of the Education Code.
 - (b) The State Department of Social Services in licensing those community care facility operators providing services to children as mandated in Section 1522 of the Health and Safety Code.
- (Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11147. Applicants; information required; perjury

In order that a thorough search may be conducted, the agencies listed in Section 11146 shall require applicants, as a condition of employment or licensing, to provide (a) their social security and drivers' license numbers, (b) educational history, (c) three personal references, (d) a five-year employment and residence history, and, (e) if appropriate, any other names they may have been known under. This information shall be provided under penalty of perjury.
(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11148. Vendors; qualifications; cost limitation

The agencies listed in Section 11146 may contract with any vendor demonstrating the capability to conduct such background searches in a timely manner and with the assurance of complete confidentiality. Any such vendor shall (a) be a licensed private investigator as defined in Section 7521 of the

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Business and Professions Code; (b) have been in business for at least five years; (c) be able to furnish bank references; (d) provide a minimum of one million dollars (\$1,000,000) in liability insurance, with the contracting agency being named as an additional insured; and (e) be able to provide services via subcontracts if necessary, in all areas of the state.

No contract shall be let unless it provides therein that the cost per applicant for a search, including administrative costs, shall not exceed forty dollars (\$40). The state shall not be liable for any amount in excess of forty dollars (\$40) per applicant.

(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11149. Applications submitted to vendor; results of fingerprint checks included

In order to expedite the work of the vendor, all applications submitted to the vendor shall include the results of the fingerprint checks conducted by the California Department of Justice.

(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11149.1. Exemption from provisions prohibiting search

Vendors are exempted from any provisions of Chapter 1 (commencing with Section 1798) of Title 18 of Part 4 of Division 3 of the Civil Code which prevent the vendor from conducting the national search of individual criminal records required by this chapter.

(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11149.2. Applicants; fee for search

Notwithstanding any other provision of law, applicants may be charged for the actual cost of the national search required by this statute, including administrative costs, not to exceed forty dollars (\$40).

(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11149.3. Furnishing information obtained from record to unauthorized person; punishment

Any vendor or employee of a vendor who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000), or imprisoned in a county jail for not more than one year, or both.

(Added by Stats.1982, c. 1222, p. —, § 2, urgency, eff. Sept. 22, 1982.)

§ 11149.4. Disclosure of confidential information; civil action; exemplary damages; costs

Any vendor or employee of a vendor who intentionally discloses information, not otherwise public, which that person knows or should reasonably know was obtained from confidential information, shall be subject to a civil action for invasion of privacy by the individual to whom the information pertains.

In any successful action brought under this section, the complainant, in addition to any special or general damages awarded, shall be awarded a minimum of two thousand five hundred dollars (\$2,500) in exemplary damages as well as attorney's fees and other litigation costs reasonably incurred in the suit.

The right, remedy, and cause of action set forth in this section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for invasion of privacy, inherent in Section 1, Article I of the California Constitution.

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§ 1203.4. Discharged petitioner; change of plea or vacation of verdict; dismissal of charge; release from penalties and disabilities; certificate of rehabilitation and pardon; application; pleading prior conviction in prosecution for subsequent offense; disclosure; firearms; reimbursement of city and county; notice of petition for relief

(a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing; however, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor which is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is

granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed *** one hundred twenty dollars (\$120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed *** one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(Amended by Stats.1983, c. 1118, § 1; Stats.1985, c. 1472, § 1; Stats.1989, c. 917, § 11; Stats.1994, c. 882 (A.B.1327), § 1.)

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§ 1203.4a. Misdemeanor sentence served; dismissal of charge; release from penalties and disabilities; subsequent offenses; reimbursement of city and county

(a) Every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he has been convicted, except as provided in Section 12021.1 of this code or Section 13555 of the Vehicle Code. The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of such defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

This subdivision applies to convictions which occurred before as well as those occurring after, the effective date of this section.

(b) Subdivision (a) does not apply to any misdemeanor falling within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county for the cost of services rendered at a rate to be determined by the county board of supervisors not to exceed sixty dollars (\$60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars (\$60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (f) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(Amended by Stats.1983, c. 1118, § 2; Stats.1988, c. 1394, § 1.)

§ 1203.45. Certain misdemeanor convictions; sealing of records

(a) In any case in which a person was under the age of 18 years at the time of commission of a misdemeanor and is eligible for, or has previously received, the relief provided by Section 1203.4 or 1203.4a, that person, in a proceeding under Section 1203.4 or 1203.4a, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. If the court finds that the person was under the age of 18 at the time of the commission of the misdemeanor, and is eligible for relief under Section 1203.4 or 1203.4a or has previously received that relief, it may issue its order granting the relief prayed for. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.

(b) This section applies to convictions which occurred before, as well as those which occur after, the effective date of this section.

(c) This section shall not apply to offenses for which registration is required under Section 290, to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, or to misdemeanor violations of the Vehicle Code relating to operation of a vehicle or of any local ordinance relating to operation, standing, stopping, or parking of a motor vehicle.

(d) This section does not apply to a person convicted of more than one offense, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action, except in the following cases:

(1) One of the offenses includes the other or others.

(2) The other conviction or convictions were for the following:

(A) Misdemeanor violations of Chapters 1 (commencing with Section 21000) to 9 (commencing with Section 22500), inclusive, Chapter 12 (commencing with Section 23100), or Chapter 13 (commencing with Section 23250) * * * of Division 11 of the Vehicle Code, other than Section 23103, 23104, 23152, 23153, or 23220.

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(B) Violation of any local ordinance relating to the operation, stopping, standing, or parking of a motor vehicle.

(3) The other conviction or convictions consisted of any combination of paragraphs (1) and (2).

(e) This section shall apply in any case in which a person was under the age of 21 at the time of the commission of an offense as to which this section is made applicable if that offense was committed prior to March 7, 1973.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall

be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(g) A person who petitions for an order sealing a record under this section may be required to reimburse the county for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred twenty dollars (\$120). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(Amended by Stats.1983, c. 1118, § 3; Stats.1994, c. 882 (A.B.1327), § 2; Stats.1995, c. 91 (S.B.975), § 129.)

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Title 3

Chapter 1 Bureau of Criminal Statistics

Article 2

DUTIES OF THE BUREAU

Sec.

13010. Collection of data; forms; records; furnishing data to federal agencies; reports; review and recommendations.
13011. Statistical and research agency.
13012. Contents of annual report.

*Article 2 was added by Stats.1955, c. 1128, p. 2122,
§ 1.*

UNIFORM CRIMINAL STATISTICS ACT

Table of Jurisdictions Wherein Act Has Been Adopted

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 11.

| Jurisdiction | Statutory Citations |
|------------------|---|
| California | West's Ann.Pen.Code, §§ 13010 to 13022. |

§ 13010. Collection of data; forms; records; furnishing data to federal agencies; reports; review and recommendations

It shall be the duty of the department:

- (a) To collect data necessary for the work of the department from all persons and agencies mentioned in Section 1320 and from any other appropriate source;
- (b) To prepare and distribute to all such persons and agencies, cards or other forms used in reporting data to the department. Such cards or forms may, in addition to other items, include items of information needed by federal bureaus or departments engaged in the development of national and uniform criminal statistics;
- (c) To recommend the form and content of records which must be kept by such persons and agencies in order to insure the correct reporting of data to the department;
- (d) To instruct such persons and agencies in the installation, maintenance, and use of such records and in the reporting of data therefrom to the department;

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- (e) To process, tabulate, analyze and interpret the data collected from such persons and agencies;
- (f) To supply, at their request, to federal bureaus or departments engaged in the collection of national criminal statistics data they need from this state;
- (g) To present to the Governor, on or before July 1st, a printed annual report containing the criminal statistics of the preceding calendar year and to present at such other times as the Attorney General may approve reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed or otherwise prepared to enable the Attorney General to send a copy to all public officials in the state dealing with criminals and to distribute them generally in channels where they will add to the public enlightenment; and
- (h) To periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation.

(Added by Stats.1955, c. 1128, p. 2122, § 1. Amended by Stats.1971, c. 1203, p. 2297, § 1; Stats.1972, c. 1377, p. 2855, § 119.2.)

§ 13011. Statistical and research agency

The department may serve as statistical and research agency to the Department of Corrections, the Board of Prison Terms, the

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Board of Corrections, the Department of the Youth Authority, and the Youthful Offender Parole Board.

(Added by Stats.1955, c. 1128, p. 2122, § 1. Amended by Stats.1965, c. 238, p. 1221, § 20; Stats.1972, c. 1377, p. 2855, § 119.3; Stats.1979, c. 255, p. 570, § 61; Stats.1979, c. 860, p. 2971, § 5.)

§ 13012. Contents of annual report

The annual report of the department provided for in Section 13010 shall contain statistics showing:

- (a) The amount and the types of offenses known to the public authorities;
- (b) The personal and social characteristics of criminals and delinquents; and
- (c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.
- (d) The number of citizens complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of such complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of such statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution and treatment of the criminals and delinquents, or concerned with the prevention of crime and

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delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

(Added Stats.1955, c. 1128, p. 2122, § 1. Amended by Stats.1972, c. 1377, p. 2855, § 119.4; Stats.1980, c. 1340, § 26, eff. Sept. 30, 1980.)

Article 3

DUTIES OF PUBLIC AGENCIES AND OFFICERS

Sec.

- 13020. Records, reports; access to data.
- 13021. Information relating to misdemeanor violations.
- 13022. Report of justifiable homicides.

*Article 3 was added by Stats.1955, c. 1128, p. 2123,
§ 1.*

§ 13020. Records, reports; access to data

It shall be the duty of every constable, city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

- (a) To install and maintain records needed for the correct reporting of statistical data required by him;
- (b) To report statistical data to the department at such times and in such manner as the Attorney General prescribes; and

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(c) To give to the Attorney General, or his accredited agent, access to statistical data for the purpose of carrying out the provisions of this title.

(Added by Stats.1955, c. 1128, p. 2123, § 1. Amended by Stats.1965, c. 238, p. 1221, § 21; Stats.1965, c. 1916, p. 4437, § 1; Stats.1972, c. 1377, p. 2856, § 119.5; Stats.1973, c. 142, p. 409, § 55.4, eff. June 30, 1973, operative July 1, 1973; Stats.1973, c. 1212, p. 2754, § 65, operative July 1, 1974; Stats.1979, c. 255, p. 570, § 62; Stats.1979, c. 860, p. 2971, § 6.)

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§ 13021. Information relating to misdemeanor violations

Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.

§ 13022. Report of justifiable homicides

Each sheriff and chief of police shall annually furnish the Department of Justice, on a form prescribed by the Attorney General, a report of all justifiable homicides committed in his jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report such homicide.

Chapter 2

Criminal Offender Record Information [New]

ARTICLE 1. LEGISLATIVE FINDINGS AND DEFINITIONS

| Sec. | |
|--------|---------------------------------------|
| 13100. | Legislative declaration. |
| 13101. | Criminal justice agencies. |
| 13102. | Criminal offender record information. |

§ 13100. Legislative declaration

The Legislature finds and declares as follows:

(a) That the criminal justice agencies in this state require, for the performance of their official duties, accurate and reasonably complete criminal offender record information.

(b) That the Legislature and other governmental policymaking or policy-researching bodies, and criminal justice agency management units require greatly improved aggregate information for the performance of their duties.

(c) That policing agencies and courts require speedy access to information concerning all felony and selected misdemeanor arrests and final dispositions of such cases.

(d) That criminal justice agencies may require regular access to detailed criminal histories relating to any felony arrest that is followed by the filing of a complaint.

(e) That, in order to achieve the above improvements, the recording, reporting, storage, analysis, and dissemination of criminal offender record information in this state must be made more uniform and efficient, and better controlled and coordinated.
(Added by Stats. 1973, c. 992, § 1, operative July 1, 1973.)

§ 13101. Criminal justice agencies

As used in this chapter, "criminal justice agencies" are those agencies at all levels of government which perform as their principal functions, activities which either:

(a) Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or

(b) Relate to the collection, storage, dissemination or usage of criminal offender record information.

§ 13102. Criminal offender record information

As used in this chapter, "criminal offender record information" means records and data compiled by criminal justice agencies for purposes of identifying criminal offenders and of maintaining as to each such offender a summary of arrests, pretrial proceedings, the nature and disposition of criminal charges, sentencing, incarceration, rehabilitation, and release.

Such information shall be restricted to that which is recorded as the result of an arrest, detention, or other initiation of criminal proceedings or of any consequent proceedings related thereto. It shall be understood to include, where appropriate, such items for each person arrested as the following:

(a) Personal identification.

(b) The fact, date, and arrest charge; whether the individual was subsequently released and, if so, by what authority and upon what terms.

(c) The fact, date, and results of any pretrial proceedings.

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- (d) The fact, date, and results of any trial or proceeding, including any sentence or penalty.
 - (e) The fact, date, and results of any direct or collateral review of that trial or proceeding; the period and place of any confinement, including admission, release; and, where appropriate, readmission and rerelease dates.
 - (f) The fact, date, and results of any release proceedings.
 - (g) The fact, date, and authority of any act of pardon or clemency.
 - (h) The fact and date of any formal termination to the criminal justice process as to that charge or conviction.
 - (i) The fact, date, and results of any proceeding revoking probation or parole.
- It shall not include intelligence, analytical, and investigative reports and files, nor statistical records and reports in which individuals are not identified and from which their identities are not ascertainable.

Article 2

RECORDING INFORMATION

Sec.

- 13125. Standard data elements; enumeration.
- 13126. Repealed.
- 13127. Fingerprint identification number; inclusion by agency originating record; time.

*Article 2 was added by Stats.1973, c. 992, p. 1910, § 1,
operative July 1, 1978.*

§ 13125. Standard data elements; enumeration

All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:

| | |
|-------------------------------------|----------------------------|
| Name—(full name) | Henry |
| Aliases | NCIC |
| Monikers | Address |
| Race | The following arrest data: |
| Sex | Arresting agency |
| Date of birth | Booking number |
| Place of birth (state or country) | Date of arrest |
| Height | Offenses charged |
| Weight | Statute citations |
| Hair color | Literal descriptions |
| Eye color | |
| CII number | |
| FBI number | |
| Social security number | |
| California operators license number | |
| Fingerprint classification number | |

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The following arrest data:—Continued

Police disposition

- Released
- Cited and released
- Turned over to
- Complaint filed

The following lower court data:

County and court name

Date complaint filed

Original offenses charged in complaint to superior court

- Held to answer

- Certified plea

Disposition—lower court

- Not convicted

- Dismissed

- Acquitted

- Court trial

- Jury trial

Convicted

- Plea

- Court trial

- Jury trial

Date of disposition

Convicted offenses

Sentence

Proceedings suspended

- Reason suspended

The following superior court data:

County

Date complaint filed

Type of proceeding

- Indictment

- Information

- Certification

Original offenses charged in indictment or information

Disposition

- Not convicted

- Dismissed

- Acquitted

- Court trial

- Jury trial

- On transcript

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The following superior court data:—Continued

Disposition—Continued

Convicted—felony, misdemeanor

Plea

Court trial

Jury trial

On transcript

Date of disposition

Convicted offenses

Sentence

Proceedings suspended

Reason suspended

Source of reopened cases

The following corrections data:

Adult probation

County

Type of court

Court number

Offense

Date on probation

Date removed

Reason for removal

Jail (unsentenced prisoners only)

Offenses charged

Name of jail or institution

Date received

Date released

Reason for release

Bail on own recognizance

Bail

Other

Committing agency

County jail (sentenced prisoners only)

Name of jail, camp, or other

Convicted offense

Sentence

Date received

Date released

Reason for release

Committing agency

Youth Authority

County

Type of court

Court number

Youth Authority number

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The following corrections data:—Continued

Youth Authority—Continued

Date received

Convicted offense

Type of receipt

Original commitment

Parole violator

Date released

Type of release

Custody

Supervision

Date terminated

Department of Corrections

County

Type of court

Court number

Department of Corrections number

Date received

Convicted offense

Type of receipt

Original commitment

Parole violator

Date released

Type of release

Custody

Supervision

Date terminated

Mentally disordered sex offenders

County

Hospital number

Date received

Date discharged

Recommendation

(Added by Stats.1973, c. 992, p. 1910, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1719, § 1, operative July 1, 1978.)

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§ 13126. Repealed by Stats.1974, c. 790, p. 1722, § 2, operative July 1, 1978

§ 13127. Fingerprint identification number; inclusion by agency originating record; time

Each recording agency shall insure that each portion of a criminal offender record that it originates shall include, for all felonies and reportable misdemeanors, the state or local unique and permanent fingerprint identification number, within 72 hours of origination of such records, excluding Saturday, Sunday, and holidays.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978.)

Article 3

REPORTING INFORMATION

See.

- 13150. Arrest; data required.
- 13151. Disposition of cases; subsequent actions; form; time.
- 13151.1. Dismissal of charge; reasons.
- 13152. Admissions or releases from detention facilities; time.
- 13153. Arrests for being found in public place under the influence of intoxicating liquor.

Article 3 was added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978.

§ 13150. Arrest; data required

For each arrest made, the reporting agency shall report to the Department of Justice, concerning each arrest, the applicable identification and arrest data described in Section 13125 and fingerprints, except as otherwise provided by law or as prescribed by the Department of Justice.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 3, operative July 1, 1978; Stats.1978, c. 152, p. 378, § 10, eff. May 24, 1978, operative July 1, 1978.)

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Criminal Law § 1228(4).

§ 13151. Disposition of cases; subsequent actions; form; time

The superior, municipal, or justice court that disposes of a case for which an arrest was required to be reported to the Department of Justice pursuant to Section 13150 or for which fingerprints were taken and submitted to the Department of Justice by order of the court shall assure that a disposition report of such case containing the applicable data elements enumerated in Section 13125, or Section 13151.1 if such disposition is one of dismissal, is furnished to the Department of Justice within 30 days according to the procedures and on a format prescribed by the department. The court shall also furnish a copy of such disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report such proceedings to the department.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978. Amended by Stats.1978, c. 152, p. 378, § 11, eff. May 24, 1978, operative July 1, 1978.)

§ 13151.1. Dismissal of charge; reasons

When a disposition described in Section 13151 is one of dismissal of the charge, the disposition report shall state one of the following reasons, as appropriate:

(a) Dismissal in furtherance of justice, pursuant to Section 1385 of the Penal Code. In addition to this dismissal label, the court shall set forth the particular reasons for dismissal.

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- (b) Case compromised; defendant discharged because restitution or other satisfaction was made to the injured person, pursuant to Sections 1377 and 1378.
- (c) Court found insufficient cause to believe defendant guilty of a public offense; defendant discharged without trial pursuant to Section 871.
- (d) Dismissal due to delay; action against defendant dismissed because the information was not filed or the action was not brought to trial within the time allowed by Section 1381, 1381.5, or 1382.
- (e) Accusation set aside pursuant to Section 995. In addition to this dismissal label, the court shall set forth the particular reasons for the dismissal.
- (f) Defective accusation; defendant discharged pursuant to Section 1008, when the action is dismissed pursuant to that section after demurrer is sustained, because no amendment of the accusatory pleading is permitted or amendment is not made or filed within the time allowed.
- (g) Defendant became a witness for the people and was discharged pursuant to Section 1099.
- (h) Defendant discharged at trial because of insufficient evidence, in order to become a witness for his codefendant pursuant to Section 1100.
- (i) Judgment arrested; defendant discharged, when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, inclusive, and defendant is released pursuant to Section 1188.
- (j) Judgment arrested; defendant recommitted, when the court finds defects in the accusatory pleading pursuant to Sections 1185 to 1187, inclusive, and defendant is recommitted to answer a new indictment or information pursuant to Section 1188.
- (k) Mistrial; defendant discharged. In addition to this dismissal label, the court shall set forth the particular reasons for its declaration of a mistrial.
- (l) Mistrial; defendant recommitted. In addition to this dismissal label, the court shall set forth the particular reasons for its declaration of a mistrial.
- (m) Any other dismissal by which the case was terminated. In addition to the dismissal label, the court shall set forth the particular reasons for the disposition.

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§ 13152. Admissions or releases from detention facilities; time

Admissions or releases from detention facilities shall be reported by the detention agency to the Department of Justice within 30 days of such action.

(Added by Stats.1973, c. 992, p. 1913, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 4, operative July 1, 1978; Stats.1978, c. 152, p. 379, § 13, eff. May 24, 1978, operative July 1, 1978.)

§ 13153. Arrests for being found in public place under the influence of intoxicating liquor

Criminal offender record information relating to arrests for being found in any public place under the influence of intoxicating liquor under subdivision (f) of Section 647 shall not be reported or maintained by the Department of Justice without special individual justification.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978. Amended by Stats.1974, c. 790, p. 1722, § 5, operative July 1, 1978.)

§ 13154. Public offenses committed while in custody; arrests

Each reporting agency shall report to the Department of Justice each arrest for the commission of a public offense while in custody in any local detention facility, or any state prison, as provided in Chapter 4 (commencing with Section 653.75) of Title 15, for inclusion in that person's state summary criminal history record. The report shall include the public offense committed and a reference.. state prison.

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Article 4

INFORMATION SERVICE

See.

- 13175. Identification, arrest and final disposition data; submission of personal identifier to department; time.
- 13176. Criminal history; submission of personal identifier to department; time.
- 13177. Requirements for other public record information.

Article 4 was added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.

§ 13175. Identification, arrest and final disposition data; submission of personal identifier to department; time

When a criminal justice agency supplies fingerprints, or a fingerprint identification number, or such other personal identifiers as the Department of Justice deems appropriate, to the Department of Justice, such agency shall, upon request, be provided with identification, arrest, and, where applicable, final disposition data relating to such person within 72 hours of receipt by the Department of Justice.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

§ 13176. Criminal history; submission of personal identifier to department; time

When a criminal justice agency entitled to such information supplies fingerprints, or a fingerprint identification number, or such other personal identifiers as the Department of Justice deems appropriate, to the Department of Justice, such agency shall, upon request, be provided with the criminal history of such person, or the needed portion thereof, within 72 hours of receipt by the Department of Justice.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

§ 13177. Requirements for other public record information

Nothing in this chapter shall be construed to prohibit the Department of Justice from requiring criminal justice agencies to report

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Probation

§ 1203.45. Petition for order sealing records; exceptions; reimbursement of city and county

(a) In any case in which a person was under the age of 18 years at the time of commission of a misdemeanor and is eligible for, or has previously received, the relief provided by Section 1203.4 or 1203.4a, that person, in a proceeding under Section 1203.4 or 1203.4a, or a separate proceeding, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. If the court finds that the person was under the age of 18 at the time of the commission of the misdemeanor, and is eligible for relief under Section 1203.4 or 1203.4a or has previously received such relief, it may issue its order granting the relief prayed for. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to their occurrence.

(b) This section applies to convictions which occurred before, as well as those which occur after, the effective date of this section.

(c) This section shall not apply to offenses for which registration is required under Section 290, to violations of Division 10 (commencing with Section 11000) of the Health and Safety Code, or to misdemeanor violations of the Vehicle Code relating to operation of a vehicle or of any local ordinance relating to operation, standing, stopping, or parking of a motor vehicle.

(d) This section does not apply to a person convicted of more than one offense, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action, except in the following cases:

(1) One of the offenses includes the other or others.

(2) The other conviction or convictions were for the following:

(i) Misdemeanor violations of Chapters 1 (commencing with Section 21000) to 9 (commencing with Section 22500), inclusive, or Chapters 12 (commencing with Section 23100) to 14 (commencing with Section 23340), inclusive, of Division 11 of the Vehicle Code, other than Section 23103, 23104, 23152, 23153, or 23220.

(ii) Violation of any local ordinance relating to the operation, stopping, standing, or parking of a motor vehicle.

(3) The other conviction or convictions consisted of any combination of paragraphs (1) and (2).

(e) This section shall apply in any case in which a person was under the age of 21 at the time of the commission of an offense as to which this section is made applicable if that offense was committed prior to March 7, 1973.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(g) A person who petitions for an order sealing a record under this section may be required to reimburse the county for the cost of services rendered at a rate to be determined by the county board of supervisors not to exceed sixty dollars (\$60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars (\$60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (f) of Section 987.3 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

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§ 13203. Arrest or detention of peace officer; postarrest diversion programs; release of information

Any criminal justice agency shall be authorized to release information concerning an arrest or detention of a peace officer which did not result in conviction, or information concerning a referral to, and participation in, any postarrest diversion program to a government agency employer of that peace officer.

§ 13300. Furnishing to authorized persons; fingerprints on file without criminal history; fees

(a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100) of Title 3 of Part 4 * * * pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and * * * Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, subdivisions (a), (b), and (c) of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

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

(5) Probation officers of the state.

(6) Parole officers of the state.

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

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when the criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(10) Any city, county, * * * city and county, or district, or any officer * * * or official thereof, when access is needed in order to assist the agency, officer, or official in fulfilling

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employment, certification, or licensing duties, and when the access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when the criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when the criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon the specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and * * * Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the local agency supplies the information, it shall furnish a copy of this information to the person to whom the information relates.

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

(3) To a peace officer of another country.

(4) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States when this information is needed for the performance of their official duties.

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

(6) The courts of the United States, other states, or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any 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.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, when access is needed in order to assist in employing persons who will be seeking entrance to private residences in the course of their employment. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

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If the local agency supplies the information pursuant to this paragraph, it shall furnish a copy of the information to the person to whom the * * * information relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

Nothing in this section shall be construed as imposing any duty upon public utilities to request local summary criminal history information on any current or prospective employee.

Seeking entrance to private residences in the course of employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(10) Any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 432.7 of the Labor Code for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

Any local government's request for local summary criminal history information for purposes of screening a prospective concessionaire and their affiliates or associates before approving or denying an application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest is deemed a "compelling need" as required by this subdivision. However, only local summary criminal history information pertaining to criminal convictions may be obtained pursuant to this paragraph.

Any information obtained from the local summary criminal history is confidential and the receiving local government shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the local government and all copies made from it shall be destroyed not more than 30 days after the local government's final decision to grant or deny consent to, or approval of, the prospective concessionaire's application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest. Nothing in this section shall be construed as imposing any duty upon a local government, or any officer or official thereof, to request local summary criminal history information on any current or prospective concessionaire or their affiliates or associates.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) A local agency taking fingerprints of a person who is an applicant for licensing, employment, or certification may charge a fee not to exceed ten dollars (\$10) in order to cover the cost of taking the fingerprints and processing the required documents.

(f) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing the information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer, or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for the expense.

(g) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

(h) It is not a violation of this article to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(i) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(j) Notwithstanding any other * * * law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information record checks which are authorized by law.

(k) Any local criminal justice agency shall be authorized to release information concerning an arrest or detention of a peace officer which did not result in conviction, or information concerning a referral to, and participation in, any postarrest diversion program to a government agency employer of that peace officer. (Added by Stats.1975, c. 1222, § 6, operative July 1, 1978. Amended by Stats.1978, c. 475, § 2; Stats.1981, c. 1103, § 4; Stats.1986, c. 923, § 2; Stats.1990, c. 769 (A.B.4311), § 3; Stats.1992, c. 1026 (S.B.1769), § 5.)

¹ Repealed.

Amendment of § 13300 by Stats.1983, c. 1297, § 4, a temporary provision under Gov. C. § 9611, was repealed by its own terms on Aug. 31, 1984, leaving the section in full force and effect as amended by Stats.1981, c. 1103, § 4.

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Government Code

Chapter 3

CRIMES RELATING TO PUBLIC RECORDS, DOCUMENTS, AND CERTIFICATES

Sec.

- 6200. Theft, destruction, falsification, or removal by officer custodian.
- 6201. Theft, destruction, falsification, or removal by person other than officer custodian.
- 6203. False certificate or writing by officer.
- 6204. False reports by peace officers.

§ 6200. Theft, destruction, alteration, etc. by custodial officer

Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:

- (a) Steal, remove, or secrete.
- (b) Destroy, mutilate, or deface.

(c) Alter or falsify.

(Amended by Stats.1990, c. 350 (S.B.2084), § 4.)

§ 6201. Theft, destruction, falsification, or removal by person other than officer custodian

Every person not an officer referred to in Section 6200, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

(Amended by Stats.1983, c. 1092, § 130, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

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Chapter 3.5 INSPECTION OF PUBLIC RECORDS

See.

- 6250. Legislative findings and declarations.
- 6251. Short title.
- 6252. Definitions.
- 6253. Public records open to inspection; time; guidelines and regulations governing procedure.
- 6253.5. Initiative, referendum and recall petitions deemed not public records.
- 6254. Exemption of particular records.
- 6254.7. Air pollution data; public records; notices and orders to building owners; trade secrets.
- 6254.8. Employment contracts between state or local agency and public official or employee; public record.
- 6255. Justification for withholding of records.
- 6256. Copies of records.
- 6257. Request for copy; fee.
- 6258. Proceedings to enforce right to inspect or to receive copy of record.
- 6258.5. Inoperative.
- 6259. Order of court; contempt; court costs and attorney fees.
- 6260. Effect of chapter on prior rights and proceedings.
- 6261. Itemized statement of total expenditures and disbursement of any agency.
- 6262. Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; inapplicability to district attorney.
- 6263. District attorney; inspection or copying of nonexempt public records.
- 6264. Order to allow district attorney to inspect or copy records.
- 6265. Disclosure of records to district attorney; status of records.

*Chapter 3.5 was added by Stats.1968, c. 1473, p. 2945,
§ 39.*

§ 6250. Legislative findings and declarations

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

(Added by Stats.1968, c. 1473, p. 2946, § 39. Amended by Stats.1970, c. 575, p. 1150, § 1.)

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§ 6251. Short title

This chapter shall be known and may be cited as the California Public Records Act.

(Added by Stats.1968, c. 1473, p. 2946, § 39.)

§ 6252. Definitions

As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; *** other local public agency, or nonprofit organizations of local governmental agencies and officials which are supported solely by public funds.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of the physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(f) "Member of the public" means any person, except a member, agent, officer, or employee of a state, or local agency acting within the scope of his or her membership, agency, office, or employment.

(Amended by Stats.1981, c. 968, p. 3680, § 1; Stats.1991, c. 181 (A.B.788), § 1.)

§ 6253. Public records open to inspection; time; guidelines and regulations governing procedure

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board

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Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Quality Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air * * * Quality Management District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in subdivision (a).
(Amended by Stats.1983, c. 826, § 1; Stats.1988, c. 409, § 1; Gov.Reorg.Plan No. 1 of 1991, § 70, eff. July 17, 1991.)

§ 6253.1. Adoption of requirements for greater access

Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.

(Added by Stats.1981, c. 968, p. 3680, § 2.)

§ 6253.5. Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents

Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 6091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(3) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(4) For petitions circulated pursuant to Section 6091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

(Amended by Stats.1982, c. 163, p. 529, § 2; Stats.1985, c. 1063, § 1; Stats.1992, c. 970 (S.B.1260), § 22.)

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§ 6254. Exemption of particular records

Text of section operative until July 1, 1996 under terms of Stats.1995, c. 778 (S.B.1059), § 3.

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

- (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.
- (b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.
- (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- (d) Contained in or related to:
 - (1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.
 - (2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).
 - (3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).
 - (4) Information received in confidence by any state agency referred to in paragraph (1).
- (e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.
- (f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (e) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a

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related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, * * * 422.75, or 646.9 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, * * * 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, * * * 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 1024.8.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for

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review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, *** that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under *** these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time *** a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

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(c) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(d) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.¹

(Amended by Stats.1995, c. 438 (A.B.985), § 1; Stats.1995, c. 777 (A.B.958), § 2; Stats.1995, c. 778 (S.B.1059), § 1.5.)

¹29 U.S.C.A. § 158.

For text of section operative July 1, 1996, see Government Code § 6254, post.

Operative Provisions

Stats.1995, c. 778 (S.B.1059), § 3 provides that some of the changes to § 6254 by that act become operative July 1, 1996.

§ 6254. Exemption of particular records

Text of section operative July 1, 1996 under the terms of Stats.1995, c. 778 (S.B.1059), § 3.

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

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(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name * * * and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age * * * of the victim, * * * the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 289, 422.6, 422.7, * * * 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 264, 264.1, 273a, 273d, 286, 288, 289, 422.6, 422.7, * * * 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply

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and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, * * * that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under * * * these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time * * * a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

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(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 3760), or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.¹
(Amended by Stats.1995, c. 438 (A.B.985), § 1; Stats.1995, c. 777 (A.B.958), § 2; Stats.1995, c. 778 (S.B.1059), § 1.5, operative July 1, 1996.)

¹29 U.S.C.A. § 158.

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§ 6254.5. Disclosures of public records; waiver of exemptions; application of section

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

- (a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.
- (b) Made through other legal proceedings or as otherwise required by law.
- (c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.
- (d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.
- (e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.
- (f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.
- (g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.
- (h) Made by the Superintendent of Banks under Section 1909 of the Financial Code or by the Savings and Loan Commissioner under Section 8009 of the Financial Code or by the Commissioner of Corporations under Section 18396 of the Financial Code.

(Amended by Stats.1995, c. 480 (A.B.1482), § 199, eff. Oct. 2, 1995, operative Oct. 2, 1995.)

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§ 6254.7. Air pollution data; public records; notices and orders to building owners; trade secrets

(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or any other state or local agency or district requires any applicant to provide before such applicant builds, erects, alters, replaces, operates, sells, rents, or uses such article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

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(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to such notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e), trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(Added by Stats.1970, c. 1295, p. 2397, § 2. Amended by Stats.1971, c. 1601, p. 3448, § 1; Stats.1972, c. 400, p. 722, § 1; Stats.1973, c. 186, p. 488, § 1, eff. July 9, 1973.)

§ 6254.8. Employment contracts between state or local agency and public official or employee; public record

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

(Added by Stats.1974, c. 1198, p. 2588, § 1.)

§ 6255. Justification for withholding of records

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

(Added by Stats.1968, c. 1473, p. 2947, § 39.)

§ 6256. Copies of records

Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(Added by Stats.1968, c. 1473, p. 2947, § 39. Amended by Stats.1970, c. 575, p. 1151, § 3.)

§ 6257. Request for copy; fee

A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a fee or deposit to the state or local agency, provided such fee shall not exceed the actual cost of providing the copy, or the prescribed statutory fee, if any, whichever is less.

(Added by Stats.1968, c. 1473, p. 2947, § 39. Amended by Stats.1975, c. 1246, p. 3212, § 8; Stats.1976, c. 822, p. 2024, § 1.)

§ 6258. Proceedings to enforce right to inspect or to receive copy of record

Any person may institute proceedings for injunctive or declarative relief in any court of competent jurisdiction to enforce his right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in such proceedings shall be set by the judge of the court with the object of securing a decision as to such matters at the earliest possible time.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1970, c. 575, p. 1151, § 4.)

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§ 6259. Order of court; contempt; court costs and attorney fees

Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and such oral argument and additional evidence as the court may allow.

If the court finds that the public official's decision to refuse disclosure is not justified under the provisions of Section 6254 or 6255, he shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure. Any person who fails to obey the order of the court shall be cited to show cause why he is not in contempt of court. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. Such costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1975, c. 1246, p. 3212, § 9.)

§ 6260. Effect of chapter on prior rights and proceedings

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

(Added by Stats.1968, c. 1473, p. 2948, § 39. Amended by Stats.1976, c. 314, p. 629, § 2.)

§ 6261. Itemized statement of total expenditures and disbursement of any agency

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

(Added by Stats.1975, c. 1246, p. 3211, § 3.5.)

§ 6262. Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; inapplicability to district attorney

The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

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§ 6263. District attorney; inspection or copying of nonexempt public records

A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

(Added by Stats.1979, c. 601, § 3.)

§ 6264. Order to allow district attorney to inspect or copy records

The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

(Added by Stats.1979, c. 601, § 4.)

§ 6265. Disclosure of records to district attorney; status of records

Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

(Added by Stats.1979, c. 601, § 5.)

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Civil Code

TITLE 1.8 PERSONAL DATA [NEW]

| Chapter | Section |
|--|---------|
| I. Information Practices Act of 1977 | 1798 |
| Title 1.8 was added by Stats.1977, c. 709, p. 2269, § 1. | |

CHAPTER I. INFORMATION PRACTICES ACT OF 1977

| Article | Section |
|--|---------|
| I. General Provisions and Legislative Findings | 1798 |
| 2. Definitions | 1798.3 |
| 4. Notification Requirements | 1798.9 |
| 5. Agency Requirements | 1798.14 |
| 6. Conditions of Disclosure | 1798.24 |
| 8. Access to Records and Administrative Remedies | 1798.30 |
| 9. Civil Remedies | 1798.45 |
| 10. Penalties | 1798.55 |

Chapter 1 was added by Stats.1977, c. 709, p. 2269, § 1.

ARTICLE 1. GENERAL PROVISIONS AND LEGISLATIVE FINDINGS

Sec.

- 1798. Citation of chapter.
- 1798.1 Legislative declaration and findings.
- 1798.2 Application of chapter.

Article 1 was added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.

§ 1798. Citation of chapter

This chapter shall be known and may be cited as the Information Practices Act of 1977.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

Sections 2, 4 and 5 of Stats.1977, c. 709, p. 2269, provide:
"Sec. 2. Each agency shall ensure that no record containing personal or confidential information shall be modified, transferred, or destroyed to avoid compliance with any of the provisions in Section 1 of this act. In the event that an agency fails to comply with the provisions of this section, an individual may bring a civil action and seek the appropriate remedies and damages in accordance with the provisions of Article 9 (commencing with Section 1798.45) of Title 1.8 of Part 4 of Division 3 of the Civil Code, as added by Section 1 of this act.

"Sec. 4. Section 1 of this act shall become operative on July 1, 1978.
"Sec. 5. This act shall not be deemed to supersede the provisions of Chapter 1299 of the Statutes of 1976 [Educ.C. § 24317; repealed, see, now, Educ.C. § 89546.

§ 1798.1 Legislative declaration and findings

The Legislature declares that the right to privacy is a personal and fundamental right protected by Section 1 of Article I of the Constitution of California and by

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the United States Constitution and that all individuals have a right of privacy in information pertaining to them. The Legislature further makes the following findings:

- (a) The right to privacy is being threatened by the indiscriminate collection, maintenance, and dissemination of personal information and the lack of effective laws and legal remedies.
 - (b) The increasing use of computers and other sophisticated information technology has greatly magnified the potential risk to individual privacy that can occur from the maintenance of personal information.
 - (c) In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits.
- (Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.2 Application of chapter

This chapter applies to personal and confidential information, except as otherwise specified, and does not apply to nonpersonal information.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

ARTICLE 2. DEFINITIONS

See.

1798.3 Definitions

Article 2 was added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.

§ 1798.3 Definitions

As used in this chapter:

- (a) The term "confidential information" means any of the following:
 - (1) Any information in any record maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Justice to prevent, control, or reduce crime or to apprehend criminals if the information is (i) compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; or (ii) compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual; or (iii) contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.
 - (2) Information consisting solely of written testing or examination material, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.
 - (3) Information containing medical, psychiatric or psychological material, if the holder of the record determines that disclosure of the information would be medically or psychologically detrimental to the individual. Such information shall, upon written authorization, be disclosed to a physician, psychiatrist or other licensed medical or psychological personnel designated by the data subject.
 - (4) Information, other than that referred to in paragraph (1) of subdivision (a),
consisting solely of investigative materials maintained by an agency * * * for

Asterisks * * * indicate deletions by amendment

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the purpose of investigating a specific grievance, complaint, or violation of state law, but only so long as an investigation is in progress and such investigative information has not been maintained for a period longer than is necessary to complete a criminal, civil, or administrative prosecution or initiate other remedial action. An agency may keep the source or sources of information used for an investigation under this section confidential so long as it determines that confidentiality is necessary to protect its law enforcement activities.

(5) Records consisting of information used solely for the purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(6) Any information which is required by statute to be withheld from the individual to whom it pertains.

(b) The term "personal information" means any information in any record about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical or employment history. It does not mean information found to be confidential or nonpersonal under subdivision (a) or (c) of Section 1798.3.

(c) The term "nonpersonal information" means all of the following:

(1) Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not, in any reasonable way (i) reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications or (ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications.

(2) An agency telephone book or directory which is used exclusively for telephone and directory information.

(3) Any card catalog of any library, or the contents of any book listed within such card catalog.

(4) Any mailing list which is used exclusively for the purpose of mailing agency information.

(5) Records required by law to be maintained and used solely as a system of statistical records, but only if such records are maintained for statistical research or reporting purposes only and are not used in whole or in part in making any determination about an identifiable individual.

(6) Records to which an individual has the right of examination pursuant to Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4 of the Penal Code.

(d) The term "agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

(1) The California Legislature.

(2) Any agency established under Article VI of the California Constitution.

(3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.

(e) The term "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(f) The term "individual" means a natural person * * *

(g) The term "maintain" includes maintain, acquire, use, or disclose.

(h) The term "person" means any natural person, corporation, partnership, firm, or association.

(i) The term "record" means any file or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical or employment history and that contains his or her name, identifying number, symbol, or other identifying particular assigned to the

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individual, including, but not limited to, a finger or voice print or photograph and is maintained by reference to such an identifying particular.

(j) The term "system of records" means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(k) The term "governmental entity," except as used in Section 1798.26, means any branch of the federal government or of the local government.

(l) The term "commercial purpose" means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats. 1978, c. 874, p. 2741, § 1, urgency, eff. Sept. 19, 1978; Stats.1979, c. 143, p. 330, § 1, urgency, eff. June 22, 1979; Stats.1980, c. 174, p. 391, § 1; Stats.1982, c. 604, p. —, § 1.)

ARTICLE 4. NOTIFICATION REQUIREMENTS

Sec.

1798.9 Filing; time; permanent public records; updating and combining notices; regulations.

1798.10 Specifications; failure to file reports.

Article 4 was added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.

§ 1798.9 Filing; time; permanent public records; updating and combining notices; regulations

Each agency maintaining a system of records containing personal or confidential information * * * shall * * * file with the Office of Information Practices the notice specified in Section 1798.10. Such notices shall be filed with that office by such agencies on * * * the first day of July of each year. Such notices shall be permanent public records. The Office of Information Practices may establish regulations prescribing the form and method of updating the notices required by Section 1798.10 to implement this section. Any agency maintaining more than one system of records may combine such notices when convenient and appropriate.

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Upon a showing of good cause by an agency, the Office of Information Practices may extend the time for filing notices for a period not to exceed 120 days.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. —, § 1.5.)

1982 Amendment. Deleted, from the first sentence, the words "on July 1, 1978" and "within 90 days thereafter"; in the second sentence deleted "also" after "shall", and deleted "on July 1, 1979 and" after "such agencies", and added the last sentence relating to extensions of time.

§ 1798.10 Specifications; failure to file reports

Notices required to be filed by Section 1798.9 shall specify each of the following:

- (a) The name of the agency and the division within the agency that is maintaining the records containing personal or confidential information and the name or title of the system of records, if any, in which such information is maintained.
- (b) A brief description of the kinds of personal and confidential information contained in the record system, including the categories of individuals and the approximate number of individuals on whom records containing personal or confidential information are maintained in the system.
- (c) Each major use or purpose within the agency for the personal or confidential information within the system.
- (d) Disclosures of the information that will be made pursuant to subdivision (e) or (f) of Section 1798.24.
- (e) The legal authority which authorizes the maintenance of personal or confidential information.
- (f) Retention and disposal policies for the personal or confidential information.
- (g) The general source or sources of the information in the system.
- (h) The title and business address of the agency official responsible for maintaining the records.
- (i) The procedures to be followed for an individual to gain access to, and contest the contents of, records containing personal information.

If an agency fails to file such a report, the office promptly shall inform the agency and if the agency fails to comply within 30 days thereafter, the office shall report on such violation in accordance with subdivision (b) of Section 1798.6.

ARTICLE 5. AGENCY REQUIREMENTS

Sec.

1798.14 Contents of records.

1798.15 Sources of information.

1798.17 Notice; contents.

1798.18 Maintenance of records; standards; transfers of records outside state government.

1798.19 Contracts for the operation or maintenance of records; requirements of chapter; employees of agency.

1798.20 Rules of conduct; instruction.

1798.21 Safeguards; administrative, technical and physical.

1798.22 Designation of employee responsible for agency compliance.

1798.23 Department of Justice; review of confidential information; classification.

§ 1798.14. Contents of records

Each agency shall maintain in its records only personal *** information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.

(Amended by Stats.1985, c. 695, § 5.)

§ 1798.15. Sources of information

Each agency shall collect personal *** information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.

(Amended by Stats.1985, c. 695, § 6.)

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§ 1798.17 Notices; contents

Each agency shall provide with any form used to collect personal or confidential information from individuals the following notice unless the same information is already contained in the form itself or the individual has already received the same information during the previous year at the time of the request:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable * * * disclosures which may be made of the information pursuant to subdivisions (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency. This subdivision shall not apply to any confidential information.

The provisions of this section shall not apply to any enforcement document issued by an employee of a law enforcement agency in the performance of his or her duties wherein the violator is provided an exact copy of the document, or to accident reports whereby the parties of interest may obtain a copy of the report pursuant to Section 20012 of the Vehicle Code.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats. 1978, c. 874, p. 2744, § 3.5, urgency, eff. Sept. 19, 1978; Stats.1982, c. 604, p. —, § 2.5.)

1978 Amendment. Added the second 1982 Amendment. Rewrote subd. (g)
paragraph of subd. (h). which formerly read:
"Any known or foreseeable interagency
or intergovernmental transfer which may
be made of the information."

§ 1798.18 Maintenance of records; standards; transfers of records outside state government

Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.

Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.19 Contracts for the operation or maintenance of records; requirements of chapter; employees of agency

Each agency when it provides by contract for the operation or maintenance of records containing personal or confidential information to accomplish an agency function, shall cause, consistent with its authority, the requirements of this chapter to be applied to such records. For purposes of Article 10 (commencing with Section 1798.55) of this chapter, any contractor and any employee of such contractor, if such contract is agreed to on or after July 1, 1978, shall be considered to be an employee of an agency. Local government functions mandated by the state are not deemed agency functions within the meaning of this section.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats. 1978, c. 874, p. 2744, § 4, urgency, eff. Sept. 19, 1978.)

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§ 1798.21 Safeguards; administrative, technical and physical

Each agency shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.22 Designation of employee responsible for agency compliance

Each agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.23 Department of Justice; review of confidential information; classification

The Department of Justice shall review all confidential information in its possession every five years commencing July 1, 1978, to determine whether it should continue to be classified as confidential.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

ARTICLE 6. CONDITIONS OF DISCLOSURE

§ 1798.24 Personal information

No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is:

- (a) To the individual to whom the information pertains.
- (b) With the prior written voluntary consent of the individual to whom the record pertains, but only if such consent has been obtained not more than 30 days before the disclosure, or in the time limit agreed to by the individual in the written consent.
- (c) To the duly appointed guardian or conservator of the individual or a person representing the individual provided that it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that such person is the authorized representative of the individual to whom the information pertains.
- (d) To those officers, employees, attorneys, agents, or volunteers of the agency which has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired.
- (e) To a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for in accordance with Section 1798.25. With respect to information transferred from a law enforcement or regulatory agency, or information transferred to another law enforcement or regulatory agency, a use is compatible if the use of the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency.
- (f) To a governmental entity when required by state or federal law.
- (g) Pursuant to the California Public Records Act, Chapter 8.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.
- (h) To a person who has provided the agency with advance adequate written assurance that the information will be used solely for statistical research or reporting purposes, but only if the information to be disclosed is in a form that will not identify any individual.
- (i) Pursuant to a determination by the agency which maintains information that compelling circumstances exist which affect the health or safety of an individual, if upon the disclosure notification is transmitted to the individual to whom the information pertains at his or her last known address. Disclosure shall not be made if it is in conflict with other state or federal laws.

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(j) To the State Archives of the State of California as a record which has sufficient historical or other value to warrant its continued preservation by the California state government, or for evaluation by the Director of General Services or his or her designee to determine whether the record has further administrative, legal, or fiscal value.

(k) To any person pursuant to a subpoena, court order, or other compulsory legal process if, before the disclosure, the agency reasonably attempts to notify the individual to whom the record pertains, and if the notification is not prohibited by law.

(l) To any person pursuant to a search warrant.

(m) Pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code.

(n) For the sole purpose of verifying and paying government health care service claims made pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(o) To a law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(p) To another person or governmental organization to the extent necessary to obtain information from the person or governmental organization as necessary for an investigation by the agency of a failure to comply with a specific state law which the agency is responsible for enforcing.

(q) To an adopted person and is limited to general background information pertaining to the adopted person's natural parents, provided that the information does not include or reveal the identity of the natural parents.

(r) To a child or a grandchild of an adopted person and disclosure is limited to medically necessary information pertaining to the adopted person's natural parents. However, the information, or the process for obtaining the information, shall not include or reveal the identity of the natural parents. The State Department of Social Services shall adopt regulations governing the release of information pursuant to this subdivision by July 1, 1985. The regulations shall require licensed adoption agencies to provide the same services provided by the department as established by this subdivision.

(s) To a committee of the Legislature or to a Member of the Legislature, or his or her staff when authorized in writing by the member, where the member has permission to obtain the information from the individual to whom it pertains or where the member provides reasonable assurance that he or she is acting on behalf of the individual.

(t) To the University of California or a nonprofit educational institution conducting scientific research, provided the request for information includes assurances of the need for personal information, procedures for protecting the confidentiality of the information and assurances that the personal identity of the subject shall not be further disclosed in individually identifiable form.

(u) To an insurer if authorized by Chapter 5 (commencing with Section 10900) of Division 4 of the Vehicle Code.

This article shall not be construed to require the disclosure of personal information to the individual to whom the information pertains when that information may otherwise be withheld as set forth in Section 1798.40.

(v) Pursuant to Section 1909, 8009, or 18396 of the Financial Code.

(Amended by Stats.1985, c. 596, § 11; Stats.1987, c. 1453, § 2; Stats.1991-1992, 1st Ex.Sess., c. 21 (A.B.66), § 33.5; Stats.1995, c. 480 (A.B.1482), § 1.1, eff. Oct. 2, 1995, operative Oct. 2, 1995.)

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§ 1798.24a. Exception; screening of prospective concessionaires

Notwithstanding Section 1798.24, information may be disclosed to any city, county, city and county, or district, or any officer or official thereof, if a written request is made to a local law enforcement agency and the information is needed to assist in the screening of a prospective concessionaire, and any affiliate or associate thereof, as these terms are defined in subdivision (k) of Section 4327 of the Labor Code for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest. However, any summary criminal history information that may be disclosed pursuant to this section shall be limited to information pertaining to criminal convictions.

(Added by Stats.1992, c. 1026 (S.B.1769), § 2.)

§ 1798.24b. Disclosure of information to protection and advocacy agency for rights of persons with developmental disabilities or mental illness

(a) Notwithstanding Section 1798.24, except the last paragraph thereof, information may be disclosed to the protection and advocacy agency designated by the Governor in this state pursuant to federal law to protect and advocate the rights of persons with developmental disabilities and persons with mental illness, as described in Division 4.7 (commencing with Section 4900) of the Welfare and Institutions Code.

(b) Information that may be disclosed pursuant to this section includes all of the following information:

(1) Name.

(2) Address.

(3) Telephone number.

(4) Any other information necessary to identify that person whose consent is necessary for either of the following purposes:

(A) To enable the protection and advocacy agency to exercise its authority and investigate incidents of abuse or neglect of persons with developmental disabilities or persons with mental illness.

(B) To obtain access to records pursuant to Section 4903 of the Welfare and Institutions Code.

(Added by Stats.1991, c. 534 (S.B.1088), § 2.)

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ARTICLE 8. ACCESS TO RECORDS AND ADMINISTRATIVE REMEDIES

§ 1798.30 Regulations or guidelines; procedure for implementation of article

Each agency shall * * * either adopt regulations or publish guidelines specifying procedures to be followed in order fully to implement each of the rights of individuals set forth in this article.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats. 1978, c. 874, p. 2747, § 7, urgency, eff. Sept. 19, 1978.)

Asterisks * * * indicate deletions by amendment

1978 Amendment. Substituted "either adopt regulation or publish guidelines" for "promulgate rules or regulations."

§ 1798.31 Application of article

This article shall apply only to personal information and not confidential information, except as otherwise expressly stated in Section 1798.40.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.40 Confidentiality of information; agency findings; review; notice; ex parte orders authorizing responses of no maintenance

(a) Except as provided in subdivision (c), if the agency determines that information requested pursuant to Section 1798.34 is confidential it shall inform the individual in writing of the agency's finding that the information contained in the record is confidential, and that disclosure of the contents is not required by law.

(b) Except as provided in subdivision (c), each agency shall conduct a review of its determination that particular information is confidential, as defined in this chapter, within 30 days from the receipt of a request by an individual directly affected by such determination, and inform the individual in writing of the findings of such review. The review shall be conducted by the head of such agency or an official specifically designated by the head of such agency.

(c) If the agency believes that compliance with subdivision (a) of this section would seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or would endanger the life of an informant or other person submitting information contained in the confidential record, it may petition the presiding judge of the superior court of the county in which the record is maintained to issue an ex parte order authorizing the agency to respond to the individual that no record is maintained. All proceedings before the court shall be in camera. If the presiding judge finds that there are reasonable grounds to believe that compliance with subdivision (a) will seriously interfere with attempts to apprehend persons who are wanted for committing a crime or attempts to prevent the commission of a crime or will endanger the life of an informant or other person submitting information contained in the confidential record, he shall issue an order authorizing the agency to respond to the individual that no record is maintained by the agency. Such order shall not be issued for longer than 30 days but can be renewed at thirty (30) day intervals. If a request pursuant to this section is received after the expiration of the order, the agency must either respond pursuant to subdivision (a) or seek a new order pursuant to this subdivision.

§ 1798.42 Confidential information; deletion from disclosures of personal information

In disclosing information contained in a record to an individual, an agency * * * need not disclose any confidential information pertaining to that individual which may be contained in a record containing personal information. To comply with this section, an agency * * * may, in disclosing personal information contained in a record, delete from such disclosure any confidential information.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978. Amended by Stats.1982, c. 604, p. —, § 7.)

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ARTICLE 9. CIVIL REMEDIES

See.

- 1798.45 Civil actions against agencies; grounds.
- 1798.46 Actions for refusal to comply with requests for inspection; injunctions; proceedings de novo; in camera examination of records; attorney fees and costs.
- 1798.47 Injunctions; orders and judgments.
- 1798.48 Failure to maintain records properly; noncompliance with provisions of chapter and rules; actual damages; costs; attorney fees.
- 1798.49 Jurisdiction; limitation of actions; nonexclusive rights and remedies.
- 1798.50 Personnel actions; qualifications of individuals; subjective opinions; liability.
- 1798.51 Lapse of time; corrections to records.
- 1798.52 Blank.
- 1798.53 Invasion of privacy; intentional disclosure of personal or confidential information; state or federal records; exemplary damages; attorney fees and costs.

Article 9 was added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.

§ 1798.45 Civil actions against agencies; grounds

An individual may bring a civil action against an agency whenever such agency does any of the following:

- (a) Refuses to comply with an individual's lawful request to inspect pursuant to subdivision (a) of Section 1798.34.
- (b) Fails to maintain any record concerning any individual with such accuracy, relevancy, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, opportunities of, or benefits to the individual that may be made on the basis of such record, if, as a proximate result of such failure, a determination is made which is adverse to the individual.
- (c) Fails to comply with any other provision of this chapter, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. (Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

Section 2 of Stats.1977, c. 709, p. 2269, provides:

"Each agency shall ensure that no record containing personal or confidential information shall be modified, transferred, or destroyed to avoid compliance with any of the provisions in Section 1 of this act. In the event that an agency fails to comply with the provisions of this section, an indi-

vidual may bring a civil action and seek the appropriate remedies and damages in accordance with the provisions of Article 9 (commencing with Section 1798.45) of Title 1.8 of Part 4 of Division 3 of the Civil Code, as added by Section 1 of this act."

§ 1798.46 Actions for refusal to comply with requests for inspection; injunctions; proceedings de novo; in camera examination of records; attorney fees and costs

In any suit brought under the provisions of subdivision (a) of Section 1798.45:

- (a) The court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from the complainant. In such a suit the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld as being confidential information and the burden is on the agency to sustain its action.
- (b) The court shall assess against the agency reasonable attorney's fees and other litigation costs reasonably incurred in any suit under this section in which the complainant has prevailed. A party may be considered to have prevailed even though he does not prevail on all issues or against all parties.

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§ 1798.47 Injunctions; orders and judgments

Any agency that fails to comply with any provision of this chapter may be enjoined by any court of competent jurisdiction. The court may make such order or judgment as may be necessary to prevent the use or employment by an agency of any practices which violate this chapter.

Actions for injunction under this section may be prosecuted by the Attorney General, or any district attorney in this state, in the name of the people of the State of California whether upon his or her own complaint, or upon the complaint of the Office of Information Practices, or of a member of the general public, or by any individual acting in his own behalf.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.48 Failure to maintain records properly; noncompliance with provisions of chapter and rules; actual damages; costs; attorney fees

In any suit brought under the provisions of subdivision (b) or (c) of Section 1798.45, the agency shall be liable to the individual in an amount equal to the sum of:

(a) Actual damages sustained by the individual, including damages for mental suffering.

(b) The costs of the action together with reasonable attorney's fees as determined by the court.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.49 Jurisdiction; limitation of actions; nonexclusive rights and remedies

An action to enforce any liability created under Sections 1798.45 to 1798.48, inclusive, may be brought in any court of competent jurisdiction in the county in which the complainant resides, or has his principal place of business, or in which the defendant's records are situated, within two years from the date on which the cause of action arises, except that where a defendant has materially and willfully misrepresented any information required under this section to be disclosed to an individual who is the subject of the information and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this section, the action may be brought at any time within two years after discovery by the complainant of the misrepresentation. Nothing in Sections 1798.45 to 1798.48, inclusive, shall be construed to authorize any civil action by reason of any injury sustained as the result of any information practice covered by this chapter prior to July 1, 1978.

The rights and remedies set forth in this chapter shall be deemed to be non-exclusive and are in addition to all those rights and remedies which are otherwise available under any other provision of law.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.50 Personnel actions; qualifications of individuals; subjective opinions; liability

A civil action shall not lie under this article based upon an allegation that an opinion which is subjective in nature, as distinguished from a factual assertion, about an individual's qualifications, in connection with a personnel action concerning such an individual, was not accurate, relevant, timely, or complete.

(Added by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

§ 1798.51 Lapse of time; corrections to records

Where a remedy other than those provided in Articles 8 and 9 is provided by law but is not available because of lapse of time an individual may obtain a correction to a record under this chapter but such correction shall not operate to revise or restore a right or remedy not provided by this chapter that has been barred because of lapse of time.

(Adopted by Stats.1977, c. 709, p. 2269, § 1, operative July 1, 1978.)

Asterisks * * * indicate deletions by amendment

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§ 1798.53. Invasion of privacy; intentional disclosure of personal information; state or federal records; exemplary damages; attorney fees and costs.

Any person, other than an employee of the state or of a local government agency acting solely in his or her official capacity, who intentionally discloses information, not otherwise public, which they know or should reasonably know was obtained from personal " " information maintained by a state agency or from "records" within a "system of records" (as these terms are defined in the Federal Privacy Act of 1974 (P.L. 93-579; 5 U.S.C. 552a!)) maintained by a federal government agency, shall be subject to a civil action, for invasion of privacy, by the individual to whom the information pertains.

In any successful action brought under this section, the complainant, in addition to any special or general damages awarded, shall be awarded a minimum of two thousand five hundred dollars (\$2,500) in exemplary damages as well as attorney's fees and other litigation costs reasonably incurred in the suit.

The right, remedy, and cause of action set forth in this section shall be nonexclusive and is in addition to all other rights, remedies, and causes of action for invasion of privacy, inherent in Section 1 of Article I of the California Constitution.

(Amended by Stats.1985, c. 695, § 23.)
16 U.S.C.A. § 552a.

ARTICLE 10. PENALTIES

See.

1798.55 Intentional violations; agency officers and employees; discipline; termination of employment.

1798.56 False pretenses; requesting or obtaining records; misdemeanor.

Article 10 was added by Stats.1977, c. 709, p. 2289, § 1, operative July 1, 1978.

§ 1798.55 Intentional violations; agency officers and employees; discipline; termination of employment

The intentional violation of any provision of this chapter or of any rules or regulations adopted thereunder, by an officer or employee of any agency shall constitute a cause for discipline, including termination of employment.

(Added by Stats.1977, c. 709, p. 2289, § 1, operative July 1, 1978.)

§ 1798.56 False pretenses; requesting or obtaining records; misdemeanor

Any person who willfully requests or obtains any record containing personal or confidential information from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000), or imprisoned not more than one year, or both.

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Education Code

45123. Employment after conviction of sex offense or narcotics offense

No person shall be employed or retained in employment by a school district who has been convicted of any sex offense as defined in Section 44010 or narcotics offense as defined in Section 44011. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against him are dismissed, this section does not prohibit his employment thereafter.

Nothing in this section shall prohibit the employment by a school district of a person convicted of a narcotics offense involving the use or possession of marijuana if the governing board of the school district determines, from the evidence presented, that the person has been rehabilitated for at least five years.

The governing board shall determine the type and manner of presentation of the evidence, and the determination of the governing board as to whether or not the person has been rehabilitated is final.

NOTES OF DECISION

The board of education was not precluded from discharging a teacher for a sex offense despite his acquittal of the criminal charge for such offense in view of provision of this section that no person shall be employed or retained by school district who has been convicted of any sex offense but if conviction is reversed and person is acquitted this section does not prohibit his employment thereafter, thus making optional at discretion of board the retention of an employee who has first been convicted of a sex offense and ultimately acquitted, the same rule applying to anyone who has been acquitted ab initio. Board of Ed. of El Monte School Dist. of Los Angeles County v. Calderon (1973) 110 Cal.Rptr. 976, 35 C.A.3d 490.

A conviction following a plea of nolo contendere under Pen.C., Section 1016, as amended in 1963, should be deemed a conviction within the meaning of Educ.C., Sections 12911, 13129 (repealed) 13130 (repealed), 13206, 13207, 13217, 13218, 13255 and this section, which authorize revocation of a credential only upon conviction of certain specified offenses under California law. 44 Ops.Atty.Gen. 163, 12-22-64.

The date of conviction, final conviction, or suspension or imposition of sentence for sex offense as defined in Section 12912, is immaterial so far as action to be taken against such person by state board of education is concerned. 20 Ops.Atty.Gen. 10.

45124. Employment of sexual psychopath

No person shall be employed or retained in employment by a school district who has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the

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Welfare and Institutions Code or under similar provisions of law of any other state. If, however, such determination is reversed and the person is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, this section does not prohibit his employment thereafter.

45125. Use of personal identification cards to ascertain conviction of crime

The governing board of any school district shall, within 10 working days of date of employment, require each person to be employed, or employed in, a position not requiring certification qualifications to have two 8" x 8" fingerprint cards bearing the legible rolled and flat impressions of such person's fingerprints together with a personal description of the applicant or employee, as the case may be, prepared by a local public law enforcement agency having jurisdiction in the area of the school district, which agency shall transmit such cards, together with the fee hereinafter specified, to the Department of Justice; except that any district, or districts with a common board; may process the fingerprint cards in the event the district so elects. "Local public law enforcement agency" as used herein includes any school district and as used in Section 45126 requires the Department of Justice to provide to any such district, upon application, information pertaining only to applicants for employment by the district, including applicants who are employees of another district, and persons already employed by the district. Upon receiving such identification cards, the Department of Justice shall ascertain whether the applicant or employee has been arrested or convicted of any crime insofar as such fact can be ascertained from information available to the department and forward such information to the local public law enforcement agency submitting the applicant's or employee's fingerprints at the earliest possible date. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant or employee.

The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees who have not completed the requirements of this section. The Department of Justice shall direct when such cards are to be forwarded to it for processing which in no event shall be later than two years from the date of enactment of this section. Districts which have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

The governing board shall provide the means whereby the identification cards may be completed and shall charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of such fee shall be forwarded to the

Department of Justice, with two copies of applicant's or employee's fingerprint cards. The governing board may collect an additional fee not to exceed two dollars (\$2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. Such additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, such fee may be reimbursed to the applicant. Funds not reimbursed applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

Notwithstanding the foregoing, substitute and temporary employees, employed for less than a school year, may be exempted from these provisions. The provisions of this section shall not apply to a district, or districts with a common board, which has an average daily attendance of 400,000 or greater, or to a school district wholly within a city and county, unless the governing board of such district or districts, by rule, provides for adherence to this section.

45126. Duty of Department of Justice to furnish information regarding applicants for employment

Any provision of law to the contrary notwithstanding, the Department of Justice, shall, as provided in Section 45125, furnish, upon application of a local public law enforcement agency all information pertaining to any such person of whom there is a record in its office.

* * *

88022. Employment after conviction of sex offense or narcotics offense

No person shall be employed or retained in employment by a community college district who has been convicted of any sex offense as defined in Section 87010 or narcotics offense as defined in Section 87011. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against him are dismissed, this section does not prohibit his employment thereafter.

Nothing in this section shall prohibit the employment by a district of a person convicted of a narcotics offense involving the use or possession of marijuana if the governing board of the district determines, from the evidence presented, that the person has been rehabilitated for at least five years.

The governing board shall determine the type and manner of presentation of the evidence, and the determination of the governing board as to whether or not the person has been rehabilitated is final.

88023. Employment of sexual psychopath

No person shall be employed or retained in employment by a community college district who has been determined to be a sexual psychopath under the provisions of Article 1 (commencing with Section 6300), Chapter 2, Part 2, Division 6 of the Welfare and Institutions Code or under similar provisions of law of any other state. If, however, such determination is reversed and the

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person is determined not to be a sexual psychopath in a new proceeding or the proceeding to determine whether he is a sexual psychopath is dismissed, this section does not prohibit his employment thereafter.

88024. Use of personal identification cards to ascertain conviction of crime

The governing board of any community college district shall, within 10 working days of date of employment, require each person to be employed, or employed in, a position not requiring certification qualifications to have two 8" x 8" fingerprint cards bearing the legible rolled and flat impressions of such person's fingerprints together with a personal description of the applicant or employee, as the case may be, prepared by a local public law enforcement agency having jurisdiction in the area of the district, which agency shall transmit such cards, together with the fee hereinafter specified, to the Department of Justice; except that a district, or districts with a common board, having an average daily attendance of 60,000 or more may process the fingerprint cards in the event the district so elects. "Local public law enforcement agency" as used herein and in Section 88025 includes a community college district with an average daily attendance of 60,000 or more. Upon receiving such identification cards, the Department of Justice shall ascertain whether the applicant or employee has been arrested or convicted of any crime insofar as such fact can be ascertained from information available to the department and forward such information to the local public law enforcement agency submitting the applicant's or employee's fingerprints at the earliest possible date. At its discretion, the Department of Justice may forward one copy of the fingerprint cards submitted to any other bureau of investigation it may deem necessary in order to verify any record of previous arrests or convictions of the applicant or employee.

The governing board of each district shall forward a request to the Department of Justice indicating the number of current employees who have not completed the requirements of this section. The Department of Justice shall direct when such cards are to be forwarded to it for processing which in no event shall be later than two years from the date of enactment of this section. Districts which have previously submitted identification cards for current employees to either the Department of Justice or the Federal Bureau of Investigation shall not be required to further implement the provisions of this section as it applies to those employees.

A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury or forfeiture of bail is deemed to be a conviction within the meaning of this section, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering of a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information.

The governing board shall provide the means whereby the identification cards may be completed and shall charge a fee determined by the Department of Justice to be sufficient to reimburse the department for the costs incurred in processing the application. The amount of such fee shall be forwarded to the Department of Justice, with two copies of applicant's or employee's fingerprint cards. The governing board may collect an additional fee not to exceed two

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dollars (\$2) payable to the local public law enforcement agency taking the fingerprints and completing the data on the fingerprint cards. Such additional fees shall be transmitted to the city or county treasury. If an applicant is subsequently hired by the board within 30 days of the application, such fee may be reimbursed to the applicant. Funds not reimbursed applicants shall be credited to the general fund of the district. If the fingerprint cards forwarded to the Department of Justice are those of a person already in the employ of the governing board, the district shall pay the fee required by this section, which fee shall be a proper charge against the general fund of the district, and no fee shall be charged the employee.

Notwithstanding the foregoing, substitute and temporary employees, employed for less than a school year, may be exempted from these provisions. The provisions of this section shall not apply to a district, or districts with a common board, which has an average daily attendance of 400,000 or greater, or to a community college district wholly within a city and county, unless the governing board of such district or districts, by rule, provides for adherence to this section.

88025. Duty of Department of Justice to furnish information regarding applicants for employment

Any provision of law to the contrary notwithstanding, the Department of Justice, shall, as provided in Section 88024, furnish, upon application of a local public law enforcement agency all information pertaining to any such person of whom there is a record in its office.

* * *

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Labor Code

ARTICLE 3

CONTRACTS AND APPLICATIONS FOR EMPLOYMENT

§ 432.7. Disclosure of arrest or detention not resulting in conviction or referral or participation in diversion programs; violations; remedies; exception; screening prospective concessionaires

(a) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) Nothing in this section shall prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(c) In any case where a person violates *** this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(d) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.

(f) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(g) (1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by that employment to receive, analyze, or process criminal offender record information.

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(i) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 * * * or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

(k) (1) Subdivision (a) shall not apply to any city, city and county, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

(2) For purposes of this subdivision the following terms have the following meanings:

(A) "Screening" means a written request for criminal history information made to a local law enforcement agency.

(B) "Prospective concessionaire" means any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency's consent to, or approval of, the acquisition by that individual or entity of any beneficial ownership interest in any public agency's concession, lease, or other property right whether directly or indirectly held. However, "prospective concessionaire" does not include any of the following:

(i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender's business and not made for the purpose of acquisition.

(ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender's security.

(C) "Affiliate" means any individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

(D) "Associate" means any individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.

(E) "Control" means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.

(f) (1) Nothing in subdivision (a) shall prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.

(2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.

(3) Any prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.

(4) (A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

(Amended by Stats.1990, c. 769 (A.B.4311), § 1; Stats.1992, c. 1026 (S.B.1769), § 3.)

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HEALTH AND SAFETY CODE

§ 11361.5. Destruction of arrest and conviction records; applicable offenses; method; records not applicable; costs

(a) Records of any court of this state, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any state agency or local public agency pertaining to the arrest or conviction of any person for a violation of subdivision (b), (c), or (d) of Section 11357 or subdivision (b) of Section 11360, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction. Any court or agency having custody of the records shall provide for the timely destruction of the records in accordance with subdivision (c). The requirements of this subdivision do not apply to records of any conviction occurring prior to January 1, 1976, or records of any arrest not followed by a conviction occurring prior to that date.

(b) This subdivision applies only to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

(1) Any violation of Section 11357, or a statutory predecessor thereof.

(2) Unlawful possession of a device, contrivance, instrument, or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(3) Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used, in violation of Section 11365, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

(4) Unlawfully using or being under the influence of marijuana, in violation of Section 11550, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Any person subject to an arrest or conviction for those offenses may apply to the Department of Justice for destruction of records pertaining to the arrest or conviction if two or more years have elapsed since the date of the conviction, or since the date of the arrest if not followed by a conviction. The application shall be submitted upon a form supplied by the Department of Justice and shall be accompanied by a fee, which shall be established by the department in an amount which will defray the cost of administering this subdivision and costs incurred by the state under subdivision (c), but which shall not exceed thirty-seven dollars and fifty cents (\$37.50). The application form shall be made available at every local police or sheriff's department and from the Department of Justice and may require that information which the department determines is necessary for purposes of identification.

The department may request, but not require, the applicant to include a self-administered fingerprint upon the application. If the department is unable to sufficiently identify the applicant for purposes of this subdivision without the fingerprint or without additional fingerprints, it shall so notify the applicant and shall request the applicant to submit any fingerprints which may be required to effect identification, including a complete set if necessary, or, alternatively, to abandon the application and request a refund of all or a portion of the fee submitted with the application, as provided in this section. If the applicant fails or refuses to submit fingerprints in accordance with the department's request within a reasonable time which shall be established by the department, or if the applicant requests a refund of the fee, the department shall promptly mail a refund to the applicant at the address specified in the application or at any other address which may be specified by the applicant. However, if the department has notified the applicant that election to abandon the application will result in forfeiture of a specified amount which is a portion of the fee, the department may retain a portion of the fee which the department determines will defray the actual costs of processing the application, provided the amount of the portion retained shall not exceed ten dollars (\$10).

Upon receipt of a sufficient application, the Department of Justice shall destroy records of the department, if any, pertaining to the arrest or conviction in the manner prescribed by subdivision (c) and shall notify the Federal Bureau of Investigation, the law enforcement agency which arrested the applicant, and, if the applicant was convicted, the probation department which investigated the applicant and the Department of Motor Vehicles, of the application. Each state or local agency receiving a notice from the Department of Justice shall destroy records of the agency, if any, pertaining to the arrest or conviction specified in the notice, in the manner prescribed by subdivision (c). The application form and the notices from the department to the agencies specified in this subdivision shall be destroyed by the department or agency, as the case may be, at the time the other records of the arrest or conviction are destroyed.

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(c) Destruction of records of arrest or conviction pursuant to subdivision (a) or (b) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest or conviction, and the record shall be prepared again so that it appears that the arrest or conviction never occurred. However, where (1) the only entries upon the record pertain to the arrest or conviction and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(d) Notwithstanding subdivision (a) or (b), written transcriptions of oral testimony in court proceedings and published judicial appellate reports are not subject to this section. Additionally, no records shall be destroyed pursuant to subdivision (a) if the defendant or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of those records has received a certified copy of the complaint in the civil action, until the civil action has finally been resolved. Immediately following the final resolution of the civil action, records subject to subdivision (a) shall be destroyed pursuant to subdivision (c) if more than two years have elapsed from the date of the conviction or arrest without conviction.

(e) Costs incurred by local agencies in complying with the provisions of subdivision (c) shall be reimbursed as provided in Section 2221 of the Revenue and Taxation Code.

Financial Code

§ 777.5. Delivery of fingerprints to law enforcement agencies to obtain criminal history records; requests; fees; consent; confidentiality

(a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, a * * * bank or any affiliate thereof, licensed * * * under the laws of any state or of the United States, or any officer or employee thereof, may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the * * * person fingerprinted relating to convictions, and to any arrest for which * * * that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 18300 of the Penal Code, furnish to the officer of the bank or affiliate responsible for the final decision regarding employment of the * * * person fingerprinted, or

to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the bank or affiliate, summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the bank or affiliate determines that employment of the * * * person fingerprinted would constitute an unreasonable risk to that bank or affiliate or its customers, the person may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting bank or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the * * * person fingerprinted.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a bank, whether directly, indirectly, or through one or more intermediaries.

(Amended by Stats.1989, c. 868, § 1.5, eff. Sept. 26, 1989.)

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§ 14409.2. Delivery of fingerprints of employment applicants to law enforcement agencies to obtain criminal history records; requests; fees; consent; confidentiality

(a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, any credit union or officer or employee thereof may deliver fingerprints taken of an applicant for employment by the credit union to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the applicant relating to convictions, and to any arrest for which the applicant is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may, pursuant to Section 13300 of the Penal Code, furnish to the officer of the credit union responsible for the final decision regarding employment of the applicant, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the credit union, summary criminal history information when requested pursuant to this section. If upon evaluation of the criminal history information received pursuant to this section, the credit union determines that employment of the applicant would constitute an unreasonable risk to the credit union or its customers, the applicant may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting credit union pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the applicant.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

§ 6525. Delivery of fingerprints to law enforcement agencies; criminal history information

(a) Notwithstanding the provisions of Sections 1051, 1052, and 1054 of the Labor Code and Section 2947 of the Penal Code, an association, a subsidiary or affiliate of an association, or any officer or employee thereof may deliver fingerprints taken of a director, an officer, an employee, or an applicant for employment to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of the *** person fingerprinted relating to convictions, and to any arrest for which *** that person is released on bail or on his or her own recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) The Department of Justice shall, pursuant to Section 11105 of the Penal Code, and a local agency may pursuant to Section 13300 of the Penal Code, furnish to the officer of the association or subsidiary or affiliate thereof responsible for the final decision regarding employment of the *** person fingerprinted, or to his or her designees having responsibilities for personnel or security decisions in the usual scope and course of their employment with the association, subsidiary, or affiliate summary criminal history information when requested pursuant to this section. If, upon evaluation of the criminal history information received pursuant to this section, the association, subsidiary, or affiliate determines that employment of the *** person fingerprinted would constitute an unreasonable risk to the association, subsidiary, or affiliate or its customers, the *** person fingerprinted may be denied employment.

(c) A request for records pursuant to this section made of the Department of Justice shall be on a form approved by the department. The department may charge a fee to be paid by the requesting *** association, subsidiary, or affiliate pursuant to subdivision (e) of Section 11105 of the Penal Code. No request shall be submitted without the written consent of the *** person fingerprinted.

(d) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

(e) "Affiliate," as used in this section, means any corporation controlling, controlled by, or under common control with, a savings association, whether directly, indirectly, or through one or more intermediaries.

(Amended by Stats.1989, c. 868, § 6, eff. Sept. 26, 1989.)

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Evidence Code Privileges

1040. Privilege for official information

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state; or

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered. (Stats.1965, c. 299, Section 1040)

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Article 5

ACCESS TO INFORMATION

See.

- 13200. Right of authorized access to individual record information not affected.
- 13201. Access to individual record information only if authorized by law.
- 13202. Public agencies and research bodies; access to criminal offender record information; removal of individual identification; costs.

*Article 5 was added by Stats.1973, c. 992, p. 1914, § 1,
operative July 1, 1978.*

§ 13200. Right of authorized access to individual record information not affected

Nothing in this chapter shall be construed to affect the right of access of any person or public agency to individual criminal offender record information that is authorized by any other provision of law.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

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§ 13201. Access to individual record information only if authorized by law

Nothing in this chapter shall be construed to authorize access of any person or public agency to individual criminal offender record information unless such access is otherwise authorized by law.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978.)

§ 13202. Public agencies and research bodies; access to criminal offender record information; removal of individual identification; costs

Every public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that such agency or body pays the cost of the processing of such data as determined by the Attorney General.

(Added by Stats.1973, c. 992, p. 1914, § 1, operative July 1, 1978. Amended by Stats.1979, c. 849, p. 2950, § 3.)

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Article 6
Local Summary Criminal History Information

13300. Furnishing to authorized persons; fingerprints on file without criminal history; fees

(a) As used in this section:

(1) "Local summary criminal history information" means the master record of information compiled by any local criminal justice agency pursuant to Chapter 2 (commencing with Section 13100), of Title 3 of Part 4 of the Penal Code pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.

(2) "Local summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than that local agency, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the local agency.

(3) "Local agency" means a local criminal justice agency.

(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (b) of Section 830.2, subdivisions (a), (b), and (j) of Section 830.3, subdivisions (a), (b), and (c) of Section 830.5, and Section 830.5a.

(3) District attorneys of the state.

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

(5) Probation officers of the state.

(6) Parole officers of the state.

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

(8) A public defender or attorney of record when representing a person in a criminal case and when authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer, or official in fulfilling employment certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal history information, and contains requirements of exclusions, or both, expressly based upon such specified criminal conduct.

(11) The subject of the local summary criminal history information.

(12) Any person or entity when access is expressly authorized by statute when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

(13) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(c) The local agency may furnish local summary criminal history information, upon a showing of a compelling need, to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code which operates a nuclear energy facility when access is needed in order to assist in employing persons to work at such facility, provided that, if the local agency supplies such data, it shall furnish a copy of such data to the person to whom the data relates.

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

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to local summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States; when such information is needed for the performance of their official duties.

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

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any 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.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, when access is needed in order to assist in employing persons who will be seeking entrance to private residences in the course of their employment. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the local agency supplies the data pursuant to this paragraph, it shall furnish a copy of the data to the person to whom the data relates.

Any information obtained from the local summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The local summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed 30 days after employment is denied or granted, including any appeal periods, except for those cases where an employee or applicant is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed 30 days after the case is resolved, including any appeal periods.

A violation of any of the provisions of this paragraph is a misdemeanor, and shall give the employee or applicant who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violation.

Nothing in this section shall be construed as imposing any duty upon public utilities to request local summary criminal history information on any current or prospective employee.

Seeking entrance to private residences in the course of employment shall be deemed a "compelling need" as required to be shown in this subdivision.

(d) Whenever an authorized request for local summary criminal history information pertains to a person whose fingerprints are on file with the local agency and the local agency has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying such request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

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(e) Whenever local summary criminal history information furnished pursuant to this section is to be used for employment, licensing, or certification purposes, the local agency shall charge the person or entity making the request a fee which it determines to be sufficient to reimburse the local agency for the cost of furnishing such information, provided that no fee shall be charged to any public law enforcement agency for local summary criminal history information furnished to assist it in employing, licensing, or certifying a person who is applying for employment with the agency as a peace officer, or criminal investigator. Any state agency required to pay a fee to the local agency for information received under this section may charge the applicant a fee sufficient to reimburse the agency for such expense.

(f) Whenever there is a conflict, the processing of criminal fingerprints shall take priority over the processing of applicant fingerprints.

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

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

Added by Stats.1975, c. 1222, Section 6 operative July 1, 1978.
Amended by Stats.1978, c. 475, Section 2.

13301. "Record"; "a person authorized by law to receive a record" defined

(a) "Record" means the master local summary criminal history information as defined in subdivision (a) of Section 13300, or a copy thereof.

(b) "A person authorized by law to receive a record" means any person or public agency authorized by a court, statute, or decisional law to receive a record.

13302. Furnishing to unauthorized person by employee of local agency

Any employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

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13303. Furnishing to unauthorized person by authorized person

Any person authorized by law to receive a record or information obtained from a record who knowingly furnishes the record or information to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

13304. Receipt, purchase or possession by unauthorized person

Any person, except those specifically referred to in Section 1070 of the Evidence Code, who, knowing he is not authorized by law to receive a record or information obtained from a record, knowingly buys, receives, or possesses the record or information is guilty of a misdemeanor.

13305. Statistical data, data for apprehension of purported criminal, and data in public records; authorized use

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

(b) It is not a violation of this article to disseminate information obtained from a record for the purpose of assisting in the apprehension of a person wanted in connection with the commission of crime.

(c) It is not a violation of this article to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

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Article 7

Examination of Local Records

13320. Definitions; purpose

(a) As used in this article, "record" with respect to any person means the local summary criminal history information as defined in subdivision (a) of Section 13300, maintained under such person's name by the local criminal justice agency.

(b) As used in this article, "agency" means any agency or consortium of agencies.

(c) It is the function and intent of this article to afford persons concerning whom a record is maintained in the files of the local criminal justice agency a reasonable opportunity to examine the record compiled from such files, and to refute any erroneous or inaccurate information contained therein.

Added by Stats.1979, c. 849, Section 4.

13321. Application; records relating to applicant; requirements

Any person desiring to examine a record relating to himself shall make application to the agency maintaining the record in the form prescribed by that agency which may require the submission of fingerprints.

Added by Stats.1979, c 849, Section 4.

13322. Fee

The agency may require the application be accompanied by a fee not to exceed twenty-five dollars (\$25) that the agency determines is equal to the cost of processing the application and making a record available for examination.

Added by Stats.1979, c 849, Section 4.

13323. Verification of applicants identity and existence of record; method of examination

When an application is received by the agency, the agency shall upon verification of the applicant's identity determine whether a record pertaining to the applicant is maintained. If such record is maintained, the agency shall at its discretion either inform the applicant by mail of the existence of the record and specify a time when the record may be examined at a suitable facility of the agency or shall mail the subject a copy of the record.

Added by Stats.1979, c 849, Section 4.

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13324. Written request to correct inaccuracy or completeness, concurrence by agency; correction of record; notice. denial; administrates adjudication

(a) If the applicant desires to question the accuracy or completeness of any material matter contained in the record, he may submit a written request to the agency in the form established by it. The request shall include a statement of the alleged inaccuracy or incompleteness in the record, its materiality, and shall specify any proof or corroboration available. Upon receipt of such request, the agency shall, within 60 days of receipt of such written request for clarification, review its information and forward to the applicant the results of such review.

(b) If the agency concurs in the allegations of inaccuracy or incompleteness in the record and finds that the error is material, it shall correct its record, and the agency shall inform the applicant of its correction of any material error in the record under this subdivision within 60 days. The agency shall notify all criminal justice agencies to which it has disseminated the incorrect record from an automated system in the past two years of the correction of the record.

The agency shall furnish the applicant with a list of all the noncriminal justice agencies to which the incorrect record has been disseminated from an automated system in the past two years unless it interferes with the conduct of an authorized investigation.

(c) If the agency denies the allegations of inaccuracy or incompleteness in the record, the matter shall at the option of the applicant be referred for administrative adjudication in accordance with the rules of the local governing body.

Added by Stats.1979, c 849, Section 4.

13325. Regulations

The agency shall adopt all regulations necessary to carry out the provisions of this article.

Added by Stats.1979, c 849, Section 4.

13326. Request of employee to obtain record or notification of existence of record; prohibition; violations; penalty

No person shall require an employee or prospective employee to obtain a copy of a record or notification that a record exists as provided in Section 13323. A violation of this section is a misdemeanor.

Added by Stats.1979, c 849, Section 4.

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SCHOOL EMPLOYEES

291. School employees; arrest for sex offense; notice to school authorities

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 or in subdivision 1 of Section 261 of any school employee, shall do either of the following:

(1) If such school employee is a teacher in any of the public schools of this state, he shall immediately notify by telephone the superintendent of schools of the school district employing such teacher and shall immediately give written notice of the arrest to the Commission for Teacher Preparation and Licensing and to the superintendent of schools in the county wherein such person is employed. Upon receipt of such notice, the county superintendent of schools shall immediately notify the governing board of the school district employing such person.

(2) If such school employee is a nonteacher in any of the public schools of this state, he shall immediately notify by telephone the superintendent of schools of the school district employing such nonteacher and shall immediately give written notice of the arrest to the governing board of the school district employing such person.

291.1 Teachers; notice of arrest to private school authorities

Every sheriff or chief of police, upon the arrest for any of the offenses enumerated in Section 290 of any person who is employed as a teacher in any private school of this state, shall immediately give written notice of the arrest to the private school authorities employing the teacher. The sheriff or chief of police shall immediately notify by telephone the private school authorities employing such teacher.

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SEALING AND DESTRUCTION OF ARREST RECORDS

851.8 Sealing and destruction of arrest records; determination of factual innocence.

(a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the district attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each such agency, person, or entity with the State of California receiving such a request shall destroy its records of the arrest and such request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal or justice court which would have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner

to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records.

The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the district attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of such charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which he was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

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(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) which are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon such records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily affecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in these civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

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(o)(1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate department of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a district court of appeal. A judgment of a district court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate department of the superior court, shall be appealed by the Attorney General.

Added by Stats.1980, c. 1172, Section 2. Former Section 851.8 was repealed by Stats.1980, c. 1172, Section 1. Effective contingent repeal of this section, see note under Section 851.85.

851.85 Motion to seal records on acquittal if person appears to judge to be factually innocent; rights of defendant under order

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

Added by Stats.1980, c. 1172, Section 3. Operative effect, see note under this section.

Section 4 of Stats.1980, c. 1172, provided: "If the provisions of Section 851.8 of the Penal Code as added by Section 2 of this act are appealed pursuant to subdivision (o) of Section 851.8, then Section 3 of this act shall be operative on the operative date of the repeal of Section 851.8."

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EXCERPTS FROM THE CALIFORNIA ADMINISTRATIVE CODE

REGULATIONS GOVERNING THE RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION IN THE STATE OF CALIFORNIA

Chapter 7. Criminal Offender Record Information Security

Article 1. Mandatory Securing of Criminal Offender Record Information

§ 700. Scope.

Note: Authority cited: Section 11077, Penal Code. Reference: Sections 11075–11081, Penal Code.

HISTORY

1. New Subchapter 7 (Article 1, Sections 700–710) filed 6–6–75; effective thirtieth day thereafter (Register 75, No. 23).
2. Order of Repeal filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 701. Definitions.

For the purposes of this article, the following definitions shall apply whenever the terms are used.

(a) "Criminal Justice Agency" means a public agency or component thereof which performs a criminal justice activity as its principal function.

(b) "Authorized Person or Agency" means any person or agency authorized by court order, statute, or decisional law to receive criminal offender record information.

(c) (Reserved)

(d) (Reserved)

(e) (Reserved)

(f) "Record Check" means obtaining the most recent rap sheet from the California Department of Justice.

HISTORY

1. Order of Repeal of subsections (c)–(e) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 702. Compliance with State Regulations.

(a) (Reserved)

(b) (Reserved)

(c) The California Department of Justice shall conduct audits of authorized persons or agencies using criminal offender record information to insure compliance with the State regulations.

(d) (Reserved)

(e) Authorized persons or agencies violating these regulations may lose direct access to criminal offender record information maintained by the California Department of Justice.

HISTORY

1. Order of Repeal of subsections (a), (b) and (d) filed 6–3–85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

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§ 703. Release of Criminal Offender Record Information.

- (a) (Reserved)
- (b) Criminal offender record information may be released, on a need-to-know basis, only to persons or agencies authorized by court order, statute, or decisional law to receive criminal offender record information.
- (c) (Reserved)
- (d) Record checks shall be conducted on all personnel hired after July 1, 1975, who have access to criminal offender record information.

HISTORY

1. Order of Repeal of subsections (a) and (c) filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 704. Juvenile Records.

HISTORY

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 705. Review of Criminal Offender Record Information.

HISTORY

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 706. Protection of Criminal Offender Record Information.

HISTORY

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 707. Automated Systems.

(a) Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion, or release. The computer system and terminals shall be located in secure premises. Non-criminal justice agencies shall not receive criminal offender record information directly from an automated criminal justice system.

(b) Record checks shall be conducted on all personnel hired after July 1, 1975, who have access to the computer system, its terminals, or the stored criminal offender record information.

(c) Each authorized agency shall keep a record of each release of criminal offender record information from the automated system. The record shall be retained and available for inspection for a period of not less than three years from the date of release. This record shall contain the date of release, the requesting terminal identifier, the receiving terminal identifier, and the information given.

§ 708. Destruction of Criminal Offender Record Information.

(a) When criminal offender record information is destroyed, the destruction shall be carried out to the extent that the identity of the subject can no longer reasonably be ascertained. When criminal offender record information is destroyed outside of the authorized agency, a person designated by the agency shall witness the destruction.

(b) (Reserved)

(c) Printouts of criminal offender record information obtained through system development, test, or maintenance shall be destroyed at the completion of the function or purpose for which the printout was obtained.

HISTORY

1. Order of Repeal of subsection (b) filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

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§ 709. Reproduction of Criminal Offender Record Information.

HISTORY

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).

§ 710. Training.

HISTORY

1. Order of Repeal filed 6-3-85 by OAL pursuant to Government Code Section 11349.7; effective thirtieth day thereafter (Register 85, No. 26).