

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: SB 731

VERSION: AMENDED APRIL 5, 2021

AUTHOR: DURAZO

SPONSOR: NUMEROUS – SEE BELOW

RECOMMENDED POSITION: NONE

SUBJECT: CRIMINAL RECORDS: RELIEF

Summary: This bill would require the Department of Justice to provide arrest and conviction relief for certain specified felony offenses. It would also require the Attorney General to exclude arrest and conviction records that were granted this relief from state or federal summary criminal history information.

Existing Law:

- 1) Requires, beginning July 1, 2022, the Department of Justice to review the records in the statewide criminal justice databases on a monthly basis and identify people with arrest records that are eligible for arrest record relief. (Penal Code (PC) §851.93(a) and (g))
- 2) Provides that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 2021 and meets any of the following (PC §851.93(a)):
 - a. The arrest was for a misdemeanor and the charge was dismissed.
 - b. The arrest was for a misdemeanor, criminal proceedings were not initiated, and at least one calendar year has elapsed since the arrest and there was no conviction, or there was an acquittal from the charges.
 - c. The arrest was for a felony punishable by imprisonment in county jail, criminal proceedings have not been initiated, and at least 3 calendar years have elapsed since the date of arrest and no conviction occurred, or there was an acquittal from the charges.
 - d. The person successfully completed a specified type of diversion program relating to the arrest.
- 3) Requires the arrest record relief to be granted without a petition or a motion by the person if the relevant information is in the department's electronic records. (PC §851.93(b))

- 4) Allows a court to permit defendants who were convicted of certain felonies punishable by imprisonment in county jail, to, after a specified period after completion of the sentence, withdraw a plea of guilty or nolo contendere and enter a not guilty plea, or allows a court to set aside a guilty verdict, if the defendant is not under supervision or serving or charged for another offense. The court must then release the defendant from all penalties and disabilities. (PC §§1203.41)
- 5) Requires, beginning July 1, 2022, the Department of Justice to review the records in the statewide criminal justice databases and identify persons with convictions that are eligible for automatic conviction record relief. A person eligible for such relief must meet specified criteria. (PC §1203.425(a))
- 6) Provides a process by which the prosecuting attorney or probation department may file a petition to prohibit the department from granting automatic relief, based on a showing that granting relief would pose a substantial threat to public safety. (PC §1203.425(b))
- 7) Requires the Department of Justice to maintain state summary criminal history information, and requires the Attorney General to furnish this information to specified agencies to specified entities if needed to perform their duties (PC §11105(a) and (b))

This Bill:

- 1) Amends the law to provide that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 2021 and the arrest was for a felony, provided that criminal proceedings have not been initiated, and at least 3 calendar years have elapsed since the date of arrest and no conviction occurred, or there was an acquittal from the charges. (PC §851.93(a)(2)(C))
- 2) Also amends the law to provide that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 2021 and the arrest was for an offense punishable by imprisonment in state prison or county jail for 8 years or more, there is no indication that criminal proceedings have been initiated, at least 6 years have elapsed since the arrest, and no conviction occurred, or the person was acquitted. (PC §851.93(a)(2)(C))
- 3) Allows a court to permit defendants who were convicted of any felony to, after a specified period after completion of the sentence, withdraw a plea of guilty or nolo contendere and enter a not guilty plea, or allows a court to set aside a guilty verdict, if the defendant is not under supervision or serving or charged for another offense. The court must then release the defendant from all penalties and disabilities. (PC §§1203.41)
- 4) Prohibits state or federal summary criminal history information from including the following information. PC §11105(v)):

- a. Records of arrest that were granted relief under PC §851.93, if at least two calendar years have passed since relief was granted and there were no new felony convictions during that time.
 - b. Records of conviction that were granted relief under several specified provisions, if at least two years has elapsed since relief was granted and there were no new felony convictions during that time.
- 5) The prohibition in item #4 above does not apply to records for which the record-holder is required to register as a sex offender, has an active record in the Supervised Release File, or if based on information available in the department's record, it appears the person is currently service a sentence or if there is an indication of pending criminal charges. (PC §11105(v)(2))
 - 6) The prohibition in item #4 above does not apply if the records are required to be disseminated by federal law. (PC §11105(v)(2))

Comment:

- 1) **Author's Intent.** The author states that SB 731 will implement a comprehensive system to prospectively and retroactively seal criminal and arrest records, as follows:
 - It provides automated sealing of all arrest records that do not result in a conviction; and
 - It provides phased relief for conviction records by expanding record sealing to all sentences following completion of terms of incarceration, post-release supervision, and an additional period of time, provided the person has completed their sentence without any new felony convictions and has no new charges pending.

The author's office also states the following:

“Nationally, an estimated 70 million people—nearly one in three adults, and 8 million people in California alone—have a past arrest or conviction on their record. California maintains an individual's criminal records until that person reaches 100 years of age.

As a result of the widespread usage of background checks in today's society, the permanence of these records present thousands of barriers resulting in widespread constraints on civic participation.”

- 2) **Effect on Board.** When an applicant applies for licensure or registration with the Board, the Board receives their state and federal summary criminal history information from the DOJ and the FBI based off of their fingerprint records.

Staff believes that the bill's amendments to Penal Code §11105(v) of the Penal Code would be the portion of the bill most likely to impact the Board. It would prohibit the Board from receiving arrest or conviction information for applicants if their arrest or conviction was granted relief. Prior convictions would not show so long as a period of two years has elapsed since the date the relief was granted, and the applicant was not convicted of a new criminal offense.

In many cases where convictions are old, and the applicant successfully rehabilitated and subsequent convictions never occurred, not receiving a report of these decisions would likely not affect the Board's decision about whether to issue a license or registration.

However, in some instances, failure to receive this information could have implications for public protection. For example, if an applicant had a long standing pattern of law violations, the inability to review an applicant's entire criminal record could potentially prevent the Board from making a complete and informed decision regarding fitness for licensure.

3) **Previous Legislation.**

- **AB 2138 (Chapter 995, Statutes of 2018)** was signed into law and made changes regarding when licensing boards can deny, suspend, or revoke a license due to prior convictions or discipline. The bill also required boards to amend their existing regulations governing substantially related crimes or acts, as well as its rehabilitation criteria.
- **AB 2396 (Chapter 737, Statutes of 2014)** was signed by the Governor and became effective on January 1, 2015. This bill removed the Board's ability to deny a license under BPC §480 because the applicant had a conviction, if that conviction had been expunged under Penal Code Sections 1203.4, 1203.4a, and 1203.41. (Penal Code Sections 1203.4, 1203.4a, and 1203.41 allow for the expungement of certain convictions after a specified length of time and fulfillment of the court's punishment. Expungement is not available for certain sex offenses, or for individuals who were sentenced to prison.)

4) **Support and Opposition**

Support:

- Californians for Safety and Justice
- Anti-Recidivism Coalition
- Homeboy Industries
- Legal Services for Prisoners with Children
- Los Angeles Regional Reentry Partnership

Opposition:

- None at this time.

5) History

2021

- 04/05/21 From committee with author's amendments. Read second time and amended. Re-referred to Com. on PUB. S.
- 03/26/21 Set for hearing April 13.
- 03/26/21 April 6 hearing postponed by committee.
- 03/12/21 Set for hearing April 6.
- 03/11/21 Re-referred to Com. on PUB. S.
- 03/03/21 From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
- 03/03/21 Referred to Com. on RLS.
- 02/22/21 Joint Rule 55 suspended. (Ayes 32. Noes 4.)
- 02/22/21 (Ayes 32. Noes 4.)
- 02/22/21 Art. IV. Sec. 8(a) of the Constitution dispensed with.
- 02/22/21 Read first time.
- 02/22/21 From printer. May be acted upon on or after March 24.
- 02/19/21 Introduced. To Com. on RLS. for assignment. To print.

Blank Page

AMENDED IN SENATE APRIL 5, 2021

AMENDED IN SENATE MARCH 3, 2021

SENATE BILL

No. 731

**Introduced by ~~Senator Durazo~~ *Senators Durazo and Bradford*
(*Coauthors: Senators Skinner and Wiener*) (*Coauthors: Assembly
Members Carrillo, Cristina Garcia, Gipson, Kalra, Lee, Medina,
and Stone*)**

February 19, 2021

An act to amend Sections 851.93, 1203.41, 1203.425, and 11105 of the Penal Code, relating to criminal records.

legislative counsel's digest

SB 731, as amended, Durazo. Criminal records: relief.

Existing law authorizes a defendant who was sentenced to a county jail for the commission of a felony and who has met specified criteria to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty after the completion of their sentence, as specified. Existing law requires the court to dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense, except as specified.

This bill would make this relief available to a defendant who has been convicted of any felony.

Commencing July 1, 2022, existing law requires the Department of Justice, on a monthly basis, to review the records in the statewide criminal justice databases and identify persons who are eligible for specified automatic conviction and records of arrest relief without requiring the filing of a petition or motion. Under existing law, a person is eligible for arrest record relief if they were arrested on or after January 1, 2021, and the arrest was for a misdemeanor and the charge was

dismissed or criminal proceedings have not been initiated within one year after the arrest, or the arrest was for a felony punishable in the county jail and criminal proceedings have not been initiated within 3 years after the date of the arrest. Under existing law, a person is eligible for automatic conviction record relief if, on or after January 1, 2021, they were sentenced to probation, and completed it without revocation, or if they were convicted of an infraction or a misdemeanor, and other criteria are met, as specified.

This bill would generally make this arrest record relief available to a person who has been arrested for a felony, including a felony punishable in the state prison, as specified. The bill would additionally make this conviction record relief available for a defendant convicted of a felony for which they did not complete probation without revocation if the defendant appears to have completed all terms of incarceration, probation, mandatory supervision, postrelease supervision, and parole.

Existing law directs the Attorney General to furnish state summary criminal history information, as defined, to specified individuals, organizations, and agencies when necessary for the execution of official duties or to implement a statute or regulation. Existing law also directs the Attorney General to disseminate federal criminal history information when specifically authorized and upon a showing of compelling need. Existing law makes the unauthorized furnishing of criminal history information a crime.

Commencing July 1, 2022, this bill would require ~~the Department of Justice to archive records of arrest and conviction that were granted relief under specified provisions. The bill would require~~ the Attorney General to exclude ~~archived records~~ *records of arrest and conviction that were granted relief under specified provisions* from state summary criminal history information, except as specified. By expanding the scope of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 851.93 of the Penal Code is amended to
2 read:

3 851.93. (a) (1) On a monthly basis, the Department of Justice
4 shall review the records in the statewide criminal justice databases,
5 and based on information in the state summary criminal history
6 repository, shall identify persons with records of arrest that meet
7 the criteria set forth in paragraph (2) and are eligible for arrest
8 record relief.

9 (2) A person is eligible for relief pursuant to this section, if the
10 arrest occurred on or after January 1, 2021, and meets any of the
11 following conditions:

12 (A) The arrest was for a misdemeanor offense and the charge
13 was dismissed.

14 (B) The arrest was for a misdemeanor offense, there is no
15 indication that criminal proceedings have been initiated, at least
16 one calendar year has elapsed since the date of the arrest, and no
17 conviction occurred, or the arrestee was acquitted of any charges
18 that arose, from that arrest.

19 (C) (i) The arrest was for a felony offense not described in
20 clause (ii), there is no indication that criminal proceedings have
21 been initiated, at least three calendar years have elapsed since the
22 date of the arrest, and no conviction occurred, or the arrestee was
23 acquitted of any charges arising, from that arrest.

24 (ii) If the arrest was for an offense punishable by imprisonment
25 in the state prison for eight years or more or by imprisonment
26 pursuant to subdivision (h) of Section 1170 for eight years or more,
27 there is no indication that criminal proceedings have been initiated,
28 at least six years have elapsed since the date of the arrest, and no
29 conviction occurred, or the arrestee was acquitted of any charges
30 arising, from that arrest.

31 (D) The person successfully completed any of the following,
32 relating to that arrest:

33 (i) A prefiling diversion program, as defined in subdivision (d)
34 of Section 851.87, administered by a prosecuting attorney in lieu
35 of filing an accusatory pleading.

36 (ii) A drug diversion program administered by a superior court
37 pursuant to Section 1000.5, or a deferred entry of judgment
38 program pursuant to Section 1000 or 1000.8.

- 1 (iii) A pretrial diversion program, pursuant to Section 1000.4.
2 (iv) A diversion program, pursuant to Section 1001.9.
3 (v) A diversion program described in Chapter 2.8 (commencing
4 with Section 1001.20), Chapter 2.8A (commencing with Section
5 1001.35), Chapter 2.81 (commencing with Section 1001.40),
6 Chapter 2.9 (commencing with Section 1001.50), Chapter 2.9A
7 (commencing with Section 1001.60), Chapter 2.9B (commencing
8 with Section 1001.70), Chapter 2.9C (commencing with Section
9 1001.80), Chapter 2.9D (commencing with Section 1001.81), or
10 Chapter 2.92 (commencing with Section 1001.85), of Title 6.
- 11 (b) (1) The department shall grant relief to a person identified
12 pursuant to subdivision (a), without requiring a petition or motion
13 by a party for that relief if the relevant information is present in
14 the department's electronic records.
- 15 (2) The state summary criminal history information shall
16 include, directly next to or below the entry or entries regarding the
17 person's arrest record, a note stating "arrest relief granted," listing
18 the date that the department granted relief, and this section. This
19 note shall be included in all statewide criminal databases with a
20 record of the arrest.
- 21 (3) Except as otherwise provided in subdivision (d), an arrest
22 for which arrest relief has been granted is deemed not to have
23 occurred, and a person who has been granted arrest relief is released
24 from any penalties and disabilities resulting from the arrest, and
25 may answer any question relating to that arrest accordingly.
- 26 (c) On a monthly basis, the department shall electronically
27 submit a notice to the superior court having jurisdiction over the
28 criminal case, informing the court of all cases for which a
29 complaint was filed in that jurisdiction and for which relief was
30 granted pursuant to this section. Commencing on August 1, 2022,
31 for any record retained by the court pursuant to Section 68152 of
32 the Government Code, except as provided in subdivision (d), the
33 court shall not disclose information concerning an arrest that is
34 granted relief pursuant to this section to any person or entity, in
35 any format, except to the person whose arrest was granted relief
36 or a criminal justice agency, as defined in Section 851.92.
- 37 (d) Relief granted pursuant to this section is subject to all of the
38 following conditions:
- 39 (1) Arrest relief does not relieve a person of the obligation to
40 disclose an arrest in response to a direct question contained in a

1 questionnaire or application for employment as a peace officer, as
2 defined in Section 830.

3 (2) Relief granted pursuant to this section has no effect on the
4 ability of a criminal justice agency, as defined in Section 851.92,
5 to access and use records that are granted relief to the same extent
6 that would have been permitted for a criminal justice agency had
7 relief not been granted.

8 (3) This section does not limit the ability of a district attorney
9 to prosecute, within the applicable statute of limitations, an offense
10 for which arrest relief has been granted pursuant to this section.

11 (4) Relief granted pursuant to this section does not affect a
12 person's authorization to own, possess, or have in the person's
13 custody or control a firearm, or the person's susceptibility to
14 conviction under Chapter 2 (commencing with Section 29800) of
15 Division 9 of Title 4 of Part 6, if the arrest would otherwise affect
16 this authorization or susceptibility.

17 (5) Relief granted pursuant to this section does not affect any
18 prohibition from holding public office that would otherwise apply
19 under law as a result of the arrest.

20 (6) Relief granted pursuant to this section does not affect the
21 authority to receive, or take adverse action based on, criminal
22 history information, including the authority to receive certified
23 court records received or evaluated pursuant to Section 1522,
24 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
25 pursuant to any statutory or regulatory provisions that incorporate
26 the criteria of those sections.

27 (e) This section does not limit petitions, motions, or orders for
28 arrest record relief, as required or authorized by any other law,
29 including, but not limited to, Sections 851.87, 851.90, 851.91,
30 1000.4, and 1001.9.

31 (f) The department shall annually publish on the OpenJustice
32 Web portal, as described under Section 13010, statistics for each
33 county regarding the total number of arrests granted relief pursuant
34 to this section and the percentage of arrests for which the state
35 summary criminal history information does not include a
36 disposition.

37 (g) This section shall be operative commencing July 1, 2022,
38 subject to an appropriation in the annual Budget Act.

39 SEC. 2. Section 1203.41 of the Penal Code is amended to read:

1 1203.41. (a) If a defendant is convicted of a felony, the court,
2 in its discretion and in the interests of justice, may order the
3 following relief, subject to the conditions of subdivision (b):

4 (1) The court may permit the defendant to withdraw their plea
5 of guilty or plea of nolo contendere and enter a plea of not guilty,
6 or, if the defendant has been convicted after a plea of not guilty,
7 the court shall set aside the verdict of guilty, and, in either case,
8 the court shall dismiss the accusations or information against the
9 defendant and the defendant shall thereafter be released from all
10 penalties and disabilities resulting from the offense of which they
11 have been convicted, except as provided in Section 13555 of the
12 Vehicle Code.

13 (2) The relief available under this section may be granted only
14 after the lapse of one year following the defendant's completion
15 of the sentence, if the sentence was imposed pursuant to
16 subparagraph (B) of paragraph (5) of subdivision (h) of Section
17 1170, or after the lapse of two years following the defendant's
18 completion of the sentence, if the sentence was imposed pursuant
19 to subparagraph (A) of paragraph (5) of subdivision (h) of Section
20 1170 or if the defendant was sentenced to the state prison.

21 (3) The relief available under this section may be granted only
22 if the defendant is not on parole or under supervision pursuant to
23 subparagraph (B) of paragraph (5) of subdivision (h) of Section
24 1170, and is not serving a sentence for, on probation for, or charged
25 with the commission of any offense.

26 (4) The defendant shall be informed, either orally or in writing,
27 of the provisions of this section and of their right, if any, to petition
28 for a certificate of rehabilitation and pardon at the time they are
29 sentenced.

30 (5) The defendant may make the application and change of plea
31 in person or by attorney, or by a probation officer authorized in
32 writing.

33 (b) Relief granted pursuant to subdivision (a) is subject to all
34 of the following conditions:

35 (1) In any subsequent prosecution of the defendant for any other
36 offense, the prior conviction may be pleaded and proved and shall
37 have the same effect as if the accusation or information had not
38 been dismissed.

39 (2) The order shall state, and the defendant shall be informed,
40 that the order does not relieve them of the obligation to disclose

1 the conviction in response to any direct question contained in any
2 questionnaire or application for public office, for licensure by any
3 state or local agency, or for contracting with the California State
4 Lottery Commission.

5 (3) Dismissal of an accusation or information pursuant to this
6 section does not permit a person to own, possess, or have in their
7 custody or control any firearm or prevent their conviction under
8 Chapter 2 (commencing with Section 29800) of Division 9 of Title
9 4 of Part 6.

10 (4) Dismissal of an accusation or information underlying a
11 conviction pursuant to this section does not permit a person
12 prohibited from holding public office as a result of that conviction
13 to hold public office.

14 (c) This section applies to any conviction specified in
15 subdivision (a) that occurred before, on, or after January 1, 2021.

16 (d) A person who petitions for a change of plea or setting aside
17 of a verdict under this section may be required to reimburse the
18 court for the actual costs of services rendered, whether or not the
19 petition is granted and the records are sealed or expunged, at a rate
20 to be determined by the court not to exceed one hundred fifty
21 dollars (\$150), and to reimburse the county for the actual costs of
22 services rendered, whether or not the petition is granted and the
23 records are sealed or expunged, at a rate to be determined by the
24 county board of supervisors not to exceed one hundred fifty dollars
25 (\$150), and to reimburse any city for the actual costs of services
26 rendered, whether or not the petition is granted and the records are
27 sealed or expunged, at a rate to be determined by the city council
28 not to exceed one hundred fifty dollars (\$150). Ability to make
29 this reimbursement shall be determined by the court using the
30 standards set forth in paragraph (2) of subdivision (g) of Section
31 987.8 and shall not be a prerequisite to a person's eligibility under
32 this section. The court may order reimbursement in any case in
33 which the petitioner appears to have the ability to pay, without
34 undue hardship, all or any portion of the costs for services
35 established pursuant to this subdivision.

36 (e) (1) Relief shall not be granted under this section unless the
37 prosecuting attorney has been given 15 days' notice of the petition
38 for relief. The probation officer shall notify the prosecuting attorney
39 when a petition is filed, pursuant to this section, if the defendant
40 was on mandatory supervision. The parole officer shall notify the

1 prosecuting attorney when a petition is filed, pursuant to this
2 section, if the defendant was on parole.

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

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

9 SEC. 3. Section 1203.425 of the Penal Code is amended to
10 read:

11 1203.425. (a) (1) (A) Commencing July 1, 2022, and subject
12 to an appropriation in the annual Budget Act, on a monthly basis,
13 the Department of Justice shall review the records in the statewide
14 criminal justice databases, and based on information in the state
15 summary criminal history repository and the Supervised Release
16 File, shall identify persons with convictions that meet the criteria
17 set forth in subparagraph (B) and are eligible for automatic
18 conviction record relief.

19 (B) A person is eligible for automatic conviction relief pursuant
20 to this section if they meet all of the following conditions:

21 (i) The person is not required to register pursuant to the Sex
22 Offender Registration Act.

23 (ii) The person does not have an active record for local, state,
24 or federal supervision in the Supervised Release File.

25 (iii) Based upon the information available in the department's
26 record, including disposition dates and sentencing terms, it does
27 not appear that the person is currently serving a sentence for an
28 offense and there is no indication of pending criminal charges.

29 (iv) The conviction meets either of the following criteria:

30 (I) The conviction occurred on or after January 1, 2021, and
31 meets either of the following criteria:

32 (aa) The defendant was sentenced to probation, and, based upon
33 the disposition date and the term of probation specified in the
34 department's records, appears to have completed their term of
35 probation without revocation.

36 (bb) The defendant was convicted of an infraction or
37 misdemeanor, was not granted probation, and, based upon the
38 disposition date and the term specified in the department's records,
39 the defendant appears to have completed their sentence, and at
40 least one calendar year has elapsed since the date of judgment.

1 (II) The conviction occurred on or after January 1, 1973, the
2 defendant was convicted of a felony other than one for which the
3 defendant completed probation without revocation, and based upon
4 the disposition date and the sentence specified in the department's
5 records, appears to have completed all terms of incarceration,
6 probation, mandatory supervision, postrelease supervision, and
7 parole.

8 (2) (A) Except as specified in subdivision (b), the department
9 shall grant relief, including dismissal of a conviction, to a person
10 identified pursuant to paragraph (1) without requiring a petition
11 or motion by a party for that relief if the relevant information is
12 present in the department's electronic records.

13 (B) The state summary criminal history information shall
14 include, directly next to or below the entry or entries regarding the
15 person's criminal record, a note stating "relief granted," listing the
16 date that the department granted relief and this section. This note
17 shall be included in all statewide criminal databases with a record
18 of the conviction.

19 (C) Except as otherwise provided in paragraph (4) and in Section
20 13555 of the Vehicle Code, a person granted conviction relief
21 pursuant to this section shall be released from all penalties and
22 disabilities resulting from the offense of which the person has been
23 convicted.

24 (3) Commencing July 1, 2022, and subject to an appropriation
25 in the annual Budget Act, on a monthly basis, the department shall
26 electronically submit a notice to the superior court having
27 jurisdiction over the criminal case, informing the court of all cases
28 for which a complaint was filed in that jurisdiction and for which
29 relief was granted pursuant to this section. Commencing on August
30 1, 2022, for any record retained by the court pursuant to Section
31 68152 of the Government Code, except as provided in paragraph
32 (4), the court shall not disclose information concerning a conviction
33 granted relief pursuant to this section or Section 1203.4, 1203.4a,
34 1203.41, or 1203.42, to any person or entity, in any format, except
35 to the person whose conviction was granted relief or a criminal
36 justice agency, as defined in Section 851.92.

37 (4) Relief granted pursuant to this section is subject to the
38 following conditions:

39 (A) Relief granted pursuant to this section does not relieve a
40 person of the obligation to disclose a criminal conviction in

1 response to a direct question contained in a questionnaire or
2 application for employment as a peace officer, as defined in Section
3 830.

4 (B) Relief granted pursuant to this section does not relieve a
5 person of the obligation to disclose the conviction in response to
6 a direct question contained in a questionnaire or application for
7 public office, or for contracting with the California State Lottery
8 Commission.

9 (C) Relief granted pursuant to this section has no effect on the
10 ability of a criminal justice agency, as defined in Section 851.92,
11 to access and use records that are granted relief to the same extent
12 that would have been permitted for a criminal justice agency had
13 relief not been granted.

14 (D) Relief granted pursuant to this section does not limit the
15 jurisdiction of the court over a subsequently filed motion to amend
16 the record, petition or motion for postconviction relief, or collateral
17 attack on a conviction for which relief has been granted pursuant
18 to this section.

19 (E) Relief granted pursuant to this section does not affect a
20 person's authorization to own, possess, or have in the person's
21 custody or control a firearm, or the person's susceptibility to
22 conviction under Chapter 2 (commencing with Section 29800) of
23 Division 9 of Title 4 of Part 6, if the criminal conviction would
24 otherwise affect this authorization or susceptibility.

25 (F) Relief granted pursuant to this section does not affect a
26 prohibition from holding public office that would otherwise apply
27 under law as a result of the criminal conviction.

28 (G) Relief granted pursuant to this section does not affect the
29 authority to receive, or take adverse action based on, criminal
30 history information, including the authority to receive certified
31 court records received or evaluated pursuant to Section 1522,
32 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
33 pursuant to any statutory or regulatory provisions that incorporate
34 the criteria of those sections.

35 (H) Relief granted pursuant to this section does not make eligible
36 a person who is otherwise ineligible to provide, or receive payment
37 for providing, in-home supportive services pursuant to Article 7
38 (commencing with Section 12300) of Chapter 3 of Part 3 of
39 Division 9 of the Welfare and Institutions Code, or pursuant to

1 Section 14132.95, 14132.952, or 14132.956 of the Welfare and
2 Institutions Code.

3 (I) In a subsequent prosecution of the defendant for any other
4 offense, the prior conviction may be pleaded and proved and shall
5 have the same effect as if the relief had not been granted.

6 (J) *Relief granted pursuant to this section does not release the*
7 *defendant from the terms and conditions of any unexpired criminal*
8 *protective orders that have been issued by the court pursuant to*
9 *paragraph (1) of subdivision (i) of Section 136.2, subdivision (j)*
10 *of Section 273.5, subdivision (l) of Section 368, or subdivision (k)*
11 *of Section 646.9. These protective orders shall remain in full effect*
12 *until expiration or until any further order by the court modifying*
13 *or terminating the order, despite the dismissal of the underlying*
14 *accusation or information.*

15 (5) This section shall not limit petitions, motions, or orders for
16 relief in a criminal case, as required or authorized by any other
17 law, including, but not limited to, Sections ~~1203.4 and 1204.4a.~~
18 *1203.4, 1203.4a, 1016.5, and 1473.7.*

19 (6) Commencing July 1, 2022, and subject to an appropriation
20 in the annual Budget Act, the department shall annually publish
21 statistics for each county regarding the total number of convictions
22 granted relief pursuant to this section and the total number of
23 convictions prohibited from automatic relief pursuant to
24 subdivision (b), on the OpenJustice Web portal, as defined in
25 Section 13010.

26 (b) (1) The prosecuting attorney, probation department, or the
27 Department of Corrections and Rehabilitation may, no later than
28 90 calendar days before the date of a person's eligibility for relief
29 pursuant to this section, file a petition to prohibit the department
30 from granting automatic relief pursuant to this section, based on
31 a showing that granting that relief would pose a substantial threat
32 to the public safety.

33 (2) The court shall give notice to the defendant and conduct a
34 hearing on the petition within 45 days after the petition is filed.

35 (3) At a hearing on the petition pursuant to this subdivision, the
36 defendant, the probation department, the Department of Corrections
37 and Rehabilitation, the prosecuting attorney, and the arresting
38 agency, through the prosecuting attorney, may present evidence
39 to the court. Notwithstanding Sections 1538.5 and 1539, the hearing
40 may be heard and determined upon declarations, affidavits, police

1 investigative reports, copies of state summary criminal history
2 information and local summary criminal history information, or
3 any other evidence submitted by the parties that is material,
4 reliable, and relevant.

5 (4) The prosecutor, probation department, or Department of
6 Corrections and Rehabilitation has the initial burden of proof to
7 show that granting conviction relief would pose a substantial threat
8 to the public safety. In determining whether granting relief would
9 pose a substantial threat to the public safety, the court may consider
10 any relevant factors including, but not limited to, either of the
11 following:

12 (A) Declarations or evidence regarding the offense for which a
13 grant of relief is being contested.

14 (B) The defendant's record of arrests and convictions.

15 (5) If the court finds that the prosecutor, probation department,
16 or the Department of Corrections and Rehabilitation, has satisfied
17 the burden of proof, the burden shifts to the defendant to show that
18 the hardship of not obtaining relief outweighs the threat to the
19 public safety of providing relief. In determining whether the
20 defendant's hardship outweighs the threat to the public safety, the
21 court may consider any relevant factors including, but not limited
22 to, either of the following:

23 (A) The hardship to the defendant that has been caused by the
24 conviction and that would be caused if relief is not granted.

25 (B) Declarations or evidence regarding the defendant's good
26 character.

27 (6) If the court grants a petition pursuant to this subdivision,
28 the court shall furnish a disposition report to the Department of
29 Justice pursuant to Section 13151, stating that relief pursuant to
30 this section was denied, and the department shall not grant relief
31 pursuant to this section.

32 (7) A person denied relief pursuant to this section may continue
33 to be eligible for relief pursuant to Section 1203.4 or 1203.4a. If
34 the court subsequently grants relief pursuant to one of those
35 sections, the court shall furnish a disposition report to the
36 Department of Justice pursuant to Section 13151, stating that relief
37 was granted pursuant to the applicable section, and the department
38 shall grant relief pursuant to that section.

39 (c) At the time of sentencing, the court shall advise a defendant,
40 either orally or in writing, of the provisions of this section and of

1 the defendant’s right, if any, to petition for a certificate of
2 rehabilitation and pardon.

3 SEC. 4. Section 11105 of the Penal Code is amended to read:

4 11105. (a) (1) The Department of Justice shall maintain state
5 summary criminal history information.

6 (2) As used in this section:

7 (A) “State summary criminal history information” means the
8 master record of information compiled by the Attorney General
9 pertaining to the identification and criminal history of a person,
10 such as name, date of birth, physical description, fingerprints,
11 photographs, dates of arrests, arresting agencies and booking
12 numbers, charges, dispositions, sentencing information, and similar
13 data about the person.

14 (B) “State summary criminal history information” does not refer
15 to records and data compiled by criminal justice agencies other
16 than the Attorney General, nor does it refer to records of complaints
17 to or investigations conducted by, or records of intelligence
18 information or security procedures of, the office of the Attorney
19 General and the Department of Justice.

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

27 (1) The courts of the state.

28 (2) Peace officers of the state, as described in Section 830.1,
29 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
30 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and
31 (b) of Section 830.5.

32 (3) District attorneys of the state.

33 (4) Prosecuting city attorneys or city prosecutors of a city within
34 the state.

35 (5) City attorneys pursuing civil gang injunctions pursuant to
36 Section 186.22a, or drug abatement actions pursuant to Section
37 3479 or 3480 of the Civil Code, or Section 11571 of the Health
38 and Safety Code.

39 (6) Probation officers of the state.

40 (7) Parole officers of the state.

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

4 (9) A public defender or attorney of record when representing
5 a person in a criminal case or a juvenile delinquency proceeding,
6 including all appeals and postconviction motions, or a parole,
7 mandatory supervision pursuant to paragraph (5) of subdivision
8 (h) of Section 1170, or postrelease community supervision
9 revocation or revocation extension proceeding, if the information
10 is requested in the course of representation.

11 (10) An agency, officer, or official of the state if the state
12 summary criminal history information is required to implement a
13 statute or regulation that expressly refers to specific criminal
14 conduct applicable to the subject person of the state summary
15 criminal history information, and contains requirements or
16 exclusions, or both, expressly based upon that specified criminal
17 conduct. The agency, officer, or official of the state authorized by
18 this paragraph to receive state summary criminal history
19 information may perform state and federal criminal history
20 information checks as provided for in subdivision (u). The
21 Department of Justice shall provide a state or federal response to
22 the agency, officer, or official pursuant to subdivision (p).

23 (11) A city, county, city and county, or district, or an officer or
24 official thereof, if access is needed in order to assist that agency,
25 officer, or official in fulfilling employment, certification, or
26 licensing duties, and if the access is specifically authorized by the
27 city council, board of supervisors, or governing board of the city,
28 county, or district if the state summary criminal history information
29 is required to implement a statute, ordinance, or regulation that
30 expressly refers to specific criminal conduct applicable to the
31 subject person of the state summary criminal history information,
32 and contains requirements or exclusions, or both, expressly based
33 upon that specified criminal conduct. The city, county, city and
34 county, district, or the officer or official thereof authorized by this
35 paragraph may also transmit fingerprint images and related
36 information to the Department of Justice to be transmitted to the
37 Federal Bureau of Investigation.

38 (12) The subject of the state summary criminal history
39 information under procedures established under Article 5
40 (commencing with Section 11120).

1 (13) A person or entity when access is expressly authorized by
2 statute if the criminal history information is required to implement
3 a statute or regulation that expressly refers to specific criminal
4 conduct applicable to the subject person of the state summary
5 criminal history information, and contains requirements or
6 exclusions, or both, expressly based upon that specified criminal
7 conduct.

8 (14) Health officers of a city, county, city and county, or district
9 when in the performance of their official duties enforcing Section
10 120175 of the Health and Safety Code.

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

13 (16) A humane society, or society for the prevention of cruelty
14 to animals, for the specific purpose of complying with Section
15 14502 of the Corporations Code for the appointment of humane
16 officers.

17 (17) Local child support agencies established by Section 17304
18 of the Family Code. When a local child support agency closes a
19 support enforcement case containing state summary criminal
20 history information, the agency shall delete or purge from the file
21 and destroy documents or information concerning or arising from
22 offenses for or of which the parent has been arrested, charged, or
23 convicted, other than for offenses related to the parent's having
24 failed to provide support for minor children, consistent with the
25 requirements of Section 17531 of the Family Code.

26 (18) County child welfare agency personnel who have been
27 delegated the authority of county probation officers to access state
28 summary criminal history information pursuant to Section 272 of
29 the Welfare and Institutions Code for the purposes specified in
30 Section 16504.5 of the Welfare and Institutions Code. Information
31 from criminal history records provided pursuant to this subdivision
32 shall not be used for a purpose other than those specified in this
33 section and Section 16504.5 of the Welfare and Institutions Code.
34 When an agency obtains records both on the basis of name checks
35 and fingerprint checks, final placement decisions shall be based
36 only on the records obtained pursuant to the fingerprint check.

37 (19) The court of a tribe, or court of a consortium of tribes, that
38 has entered into an agreement with the state pursuant to Section
39 10553.1 of the Welfare and Institutions Code. This information
40 may be used only for the purposes specified in Section 16504.5

1 of the Welfare and Institutions Code and for tribal approval or
2 tribal licensing of foster care or adoptive homes. Article 6
3 (commencing with Section 11140) shall apply to officers, members,
4 and employees of a tribal court receiving state summary criminal
5 history information pursuant to this section.

6 (20) Child welfare agency personnel of a tribe or consortium
7 of tribes that has entered into an agreement with the state pursuant
8 to Section 10553.1 of the Welfare and Institutions Code and to
9 whom the state has delegated duties under paragraph (2) of
10 subdivision (a) of Section 272 of the Welfare and Institutions Code.
11 The purposes for use of the information shall be for the purposes
12 specified in Section 16504.5 of the Welfare and Institutions Code
13 and for tribal approval or tribal licensing of foster care or adoptive
14 homes. When an agency obtains records on the basis of name
15 checks and fingerprint checks, final placement decisions shall be
16 based only on the records obtained pursuant to the fingerprint
17 check. Article 6 (commencing with Section 11140) shall apply to
18 child welfare agency personnel receiving criminal record offender
19 information pursuant to this section.

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

23 (22) A court investigator providing investigations or reviews
24 in conservatorships pursuant to Section 1826, 1850, 1851, or
25 2250.6 of the Probate Code.

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

28 (24) A humane officer pursuant to Section 14502 of the
29 Corporations Code for the purposes of performing the officer's
30 duties.

31 (25) A public agency described in subdivision (b) of Section
32 15975 of the Government Code, for the purpose of oversight and
33 enforcement policies with respect to its contracted providers.

34 (26) (A) A state entity, or its designee, that receives federal tax
35 information. A state entity or its designee that is authorized by this
36 paragraph to receive state summary criminal history information
37 also may transmit fingerprint images and related information to
38 the Department of Justice to be transmitted to the Federal Bureau
39 of Investigation for the purpose of the state entity or its designee
40 obtaining federal level criminal offender record information from

1 the Department of Justice. This information shall be used only for
2 the purposes set forth in Section 1044 of the Government Code.

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

7 (c) The Attorney General may furnish state summary criminal
8 history information and, when specifically authorized by this
9 subdivision, federal level criminal history information upon a
10 showing of a compelling need to any of the following, provided
11 that when information is furnished to assist an agency, officer, or
12 official of state or local government, a public utility, or any other
13 entity in fulfilling employment, certification, or licensing duties,
14 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
15 Labor Code shall apply:

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

22 (2) A peace officer of the state other than those included in
23 subdivision (b).

24 (3) An illegal dumping enforcement officer as defined in
25 subdivision (j) of Section 830.7.

26 (4) A peace officer of another country.

27 (5) Public officers, other than peace officers, of the United
28 States, other states, or possessions or territories of the United
29 States, provided that access to records similar to state summary
30 criminal history information is expressly authorized by a statute
31 of the United States, other states, or possessions or territories of
32 the United States if the information is needed for the performance
33 of their official duties.

34 (6) A person when disclosure is requested by a probation, parole,
35 or peace officer with the consent of the subject of the state
36 summary criminal history information and for purposes of
37 furthering the rehabilitation of the subject.

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

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

3 (9) An individual who is the subject of the record requested if
4 needed in conjunction with an application to enter the United States
5 or a foreign nation.

6 (10) (A) (i) A public utility, as defined in Section 216 of the
7 Public Utilities Code, or a cable corporation as defined in
8 subparagraph (B), if receipt of criminal history information is
9 needed in order to assist in employing current or prospective
10 employees, contract employees, or subcontract employees who,
11 in the course of their employment, may be seeking entrance to
12 private residences or adjacent grounds. The information provided
13 shall be limited to the record of convictions and arrests for which
14 the person is released on bail or on their own recognizance pending
15 trial.

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

19 (iii) State summary criminal history information is confidential
20 and the receiving public utility or cable corporation shall not
21 disclose its contents, other than for the purpose for which it was
22 acquired. The state summary criminal history information in the
23 possession of the public utility or cable corporation and all copies
24 made from it shall be destroyed not more than 30 days after
25 employment or promotion or transfer is denied or granted, except
26 for those cases where a current or prospective employee is out on
27 bail or on their own recognizance pending trial, in which case the
28 state summary criminal history information and all copies shall be
29 destroyed not more than 30 days after the case is resolved.

30 (iv) A violation of this paragraph is a misdemeanor, and shall
31 give the current or prospective employee who is injured by the
32 violation a cause of action against the public utility or cable
33 corporation to recover damages proximately caused by the
34 violations. A public utility's or cable corporation's request for
35 state summary criminal history information for purposes of
36 employing current or prospective employees who may be seeking
37 entrance to private residences or adjacent grounds in the course
38 of their employment shall be deemed a "compelling need" as
39 required to be shown in this subdivision.

1 (v) This section does not impose a duty upon public utilities or
2 cable corporations to request state summary criminal history
3 information on current or prospective employees.

4 (B) For purposes of this paragraph, “cable corporation” means
5 a corporation or firm that transmits or provides television,
6 computer, or telephone services by cable, digital, fiber optic,
7 satellite, or comparable technology to subscribers for a fee.

8 (C) Requests for federal level criminal history information
9 received by the Department of Justice from entities authorized
10 pursuant to subparagraph (A) shall be forwarded to the Federal
11 Bureau of Investigation by the Department of Justice. Federal level
12 criminal history information received or compiled by the
13 Department of Justice may then be disseminated to the entities
14 referenced in subparagraph (A), as authorized by law.

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

27 (12) A foreign government, if requested by the individual who
28 is the subject of the record requested, if needed in conjunction with
29 the individual’s application to adopt a minor child who is a citizen
30 of that foreign nation. Requests for information pursuant to this
31 paragraph shall be in accordance with the process described in
32 Sections 11122 to 11124, inclusive. The response shall be provided
33 to the foreign government or its designee and to the individual
34 who requested the information.

35 (d) Whenever an authorized request for state summary criminal
36 history information pertains to a person whose fingerprints are on
37 file with the Department of Justice and the department has no
38 criminal history of that person, and the information is to be used
39 for employment, licensing, or certification purposes, the fingerprint
40 card accompanying the request for information, if any, may be

1 stamped “no criminal record” and returned to the person or entity
2 making the request.

3 (e) Whenever state summary criminal history information is
4 furnished as the result of an application and is to be used for
5 employment, licensing, or certification purposes, the Department
6 of Justice may charge the person or entity making the request a
7 fee that it determines to be sufficient to reimburse the department
8 for the cost of furnishing the information. In addition, the
9 Department of Justice may add a surcharge to the fee to fund
10 maintenance and improvements to the systems from which the
11 information is obtained. Notwithstanding any other law, a person
12 or entity required to pay a fee to the department for information
13 received under this section may charge the applicant a fee sufficient
14 to reimburse the person or entity for this expense. All moneys
15 received by the department pursuant to this section, Sections
16 11105.3 and 26190, and former Section 13588 of the Education
17 Code shall be deposited in a special account in the General Fund
18 to be available for expenditure by the department to offset costs
19 incurred pursuant to those sections and for maintenance and
20 improvements to the systems from which the information is
21 obtained upon appropriation by the Legislature.

22 (f) Whenever there is a conflict, the processing of criminal
23 fingerprints and fingerprints of applicants for security guard or
24 alarm agent registrations or firearms qualification permits
25 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
26 of the Business and Professions Code shall take priority over the
27 processing of other applicant fingerprints.

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

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

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

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

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

12 (2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision*
13 *(v) and notwithstanding* any other law, whenever state summary
14 criminal history information is initially furnished pursuant to
15 paragraph (1), the Department of Justice shall disseminate the
16 following information:

17 (A) Every conviction rendered against the applicant.

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

22 (C) Every arrest or detention, except for an arrest or detention
23 resulting in an exoneration, provided, however, that where the
24 records of the Department of Justice do not contain a disposition
25 for the arrest, the Department of Justice first makes a genuine effort
26 to determine the disposition of the arrest.

27 (D) Every successful diversion.

28 (E) Every date and agency name associated with all retained
29 peace officer or nonsworn law enforcement agency employee
30 preemployment criminal offender record information search
31 requests.

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

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

35 (l) (1) This subdivision shall apply whenever state or federal
36 summary criminal history information is furnished by the
37 Department of Justice as the result of an application by a criminal
38 justice agency or organization as defined in Section 13101, and
39 the information is to be used for criminal justice employment,
40 licensing, or certification purposes.

1 (2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision*
2 *(v) and notwithstanding* any other law, whenever state summary
3 criminal history information is initially furnished pursuant to
4 paragraph (1), the Department of Justice shall disseminate the
5 following information:

6 (A) Every conviction rendered against the applicant.

7 (B) Every arrest for an offense for which the applicant is
8 presently awaiting trial, whether the applicant is incarcerated or
9 has been released on bail or on their own recognizance pending
10 trial.

11 (C) Every arrest for an offense for which the records of the
12 Department of Justice do not contain a disposition or which did
13 not result in a conviction, provided that the Department of Justice
14 first makes a genuine effort to determine the disposition of the
15 arrest. However, information concerning an arrest shall not be
16 disclosed if the records of the Department of Justice indicate or if
17 the genuine effort reveals that the subject was exonerated,
18 successfully completed a diversion or deferred entry of judgment
19 program, or the arrest was deemed a detention, or the subject was
20 granted relief pursuant to Section 851.91.

21 (D) Every date and agency name associated with all retained
22 peace officer or nonsworn law enforcement agency employee
23 preemployment criminal offender record information search
24 requests.

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

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

28 (m) (1) This subdivision shall apply whenever state or federal
29 summary criminal history information is furnished by the
30 Department of Justice as the result of an application by an
31 authorized agency or organization pursuant to Section 1522,
32 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
33 a statute that incorporates the criteria of any of those sections or
34 this subdivision by reference, and the information is to be used for
35 employment, licensing, or certification purposes.

36 (2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision*
37 *(v) and notwithstanding* any other law, whenever state summary
38 criminal history information is initially furnished pursuant to
39 paragraph (1), the Department of Justice shall disseminate the
40 following information:

1 (A) Every conviction of an offense rendered against the
2 applicant, except a conviction for which relief has been granted
3 pursuant to Section 1203.49.

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

8 (C) Every arrest for an offense for which the Department of
9 Social Services is required by paragraph (1) of subdivision (a) of
10 Section 1522 of the Health and Safety Code to determine if an
11 applicant has been arrested. However, if the records of the
12 Department of Justice do not contain a disposition for an arrest,
13 the Department of Justice shall first make a genuine effort to
14 determine the disposition of the arrest.

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

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

18 (3) Notwithstanding the requirements of the sections referenced
19 in paragraph (1) of this subdivision, the Department of Justice
20 shall not disseminate information about an arrest subsequently
21 deemed a detention or an arrest that resulted in the successful
22 completion of a diversion program, exoneration, or a grant of relief
23 pursuant to Section 851.91.

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

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

31 (B) Section 11105.3 or 11105.4.

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

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

36 (2) With the exception of applications submitted by
37 transportation companies authorized pursuant to Section 11105.3,
38 *and except as otherwise provided in subdivision (v)*, and
39 notwithstanding any other law, whenever state summary criminal
40 history information is initially furnished pursuant to paragraph (1),

1 the Department of Justice shall disseminate the following
2 information:

3 (A) Every conviction, except a conviction for which relief has
4 been granted pursuant to Section 1203.49, rendered against the
5 applicant for a violation or attempted violation of an offense
6 specified in subdivision (a) of Section 15660 of the Welfare and
7 Institutions Code. However, with the exception of those offenses
8 for which registration is required pursuant to Section 290, the
9 Department of Justice shall not disseminate information pursuant
10 to this subdivision unless the conviction occurred within 10 years
11 of the date of the agency's request for information or the conviction
12 is over 10 years old but the subject of the request was incarcerated
13 within 10 years of the agency's request for information.

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

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

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

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

30 (2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision*
31 *(v) and notwithstanding* any other law, whenever state summary
32 criminal history information is initially furnished pursuant to
33 paragraph (1), the Department of Justice shall disseminate the
34 following information:

35 (A) Every conviction rendered against the applicant for a
36 violation or attempted violation of an offense specified in Section
37 550 of the Financial Code, except a conviction for which relief
38 has been granted pursuant to Section 1203.49.

39 (B) Every arrest for a violation or attempted violation of an
40 offense specified in Section 550 of the Financial Code for which

1 the applicant is presently awaiting trial, whether the applicant is
2 incarcerated or has been released on bail or on their own
3 recognizance pending trial.

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

6 (p) (1) This subdivision shall apply whenever state or federal
7 criminal history information is furnished by the Department of
8 Justice as the result of an application by an agency, organization,
9 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
10 by a transportation company authorized pursuant to Section
11 11105.3, or a statute that incorporates the criteria of that section
12 or this subdivision by reference, and the information is to be used
13 for employment, licensing, or certification purposes.

14 (2) ~~Notwithstanding~~ *Except as otherwise provided in subdivision*
15 *(v) and notwithstanding* any other law, whenever state summary
16 criminal history information is initially furnished pursuant to
17 paragraph (1), the Department of Justice shall disseminate the
18 following information:

19 (A) Every conviction rendered against the applicant, except a
20 conviction for which relief has been granted pursuant to Section
21 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49. The
22 Commission on Teacher Credentialing shall receive every
23 conviction rendered against an applicant, retroactive to January 1,
24 2020, regardless of relief granted pursuant to Section 1203.4,
25 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

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

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

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

33 (q) All agencies, organizations, or individuals defined in
34 subdivisions (k) to (p), inclusive, may contract with the Department
35 of Justice for subsequent notification pursuant to Section 11105.2.
36 This subdivision shall not supersede sections that mandate an
37 agency, organization, or individual to contract with the Department
38 of Justice for subsequent notification pursuant to Section 11105.2.

1 (r) This section does not require the Department of Justice to
2 cease compliance with any other statutory notification
3 requirements.

4 (s) Section 50.12 of Title 28 of the Code of Federal Regulations
5 shall be followed in processing federal criminal history
6 information.

7 (t) Whenever state or federal summary criminal history
8 information is furnished by the Department of Justice as the result
9 of an application by an authorized agency, organization, or
10 individual defined in subdivisions (k) to (p), inclusive, and the
11 information is to be used for employment, licensing, or certification
12 purposes, the authorized agency, organization, or individual shall
13 expeditiously furnish a copy of the information to the person to
14 whom the information relates if the information is a basis for an
15 adverse employment, licensing, or certification decision. When
16 furnished other than in person, the copy shall be delivered to the
17 last contact information provided by the applicant.

18 (u) (1) If a fingerprint-based criminal history information check
19 is required pursuant to any statute, that check shall be requested
20 from the Department of Justice and shall be applicable to the person
21 identified in the referencing statute. The agency or entity identified
22 in the statute shall submit to the Department of Justice fingerprint
23 images and related information required by the Department of
24 Justice of the types of applicants identified in the referencing
25 statute, for the purpose of obtaining information as to the existence
26 and content of a record of state or federal convictions and state or
27 federal arrests and also information as to the existence and content
28 of a record of the state or federal arrests for which the Department
29 of Justice establishes that the person is free on bail or on their own
30 recognizance pending trial or appeal.

31 (2) If requested, the Department of Justice shall transmit
32 fingerprint images and related information received pursuant to
33 this section to the Federal Bureau of Investigation for the purpose
34 of obtaining a federal criminal history information check. The
35 Department of Justice shall review the information returned from
36 the Federal Bureau of Investigation, and compile and disseminate
37 a response or a fitness determination, as appropriate, to the agency
38 or entity identified in the referencing statute.

39 (3) The Department of Justice shall provide a state- or
40 federal-level response or a fitness determination, as appropriate,

1 to the agency or entity identified in the referencing statute, pursuant
2 to the identified subdivision.

3 (4) The agency or entity identified in the referencing statute
4 shall request from the Department of Justice subsequent notification
5 service, as provided pursuant to Section 11105.2, for persons
6 described in the referencing statute.

7 (5) The Department of Justice shall charge a fee sufficient to
8 cover the reasonable cost of processing the request described in
9 this subdivision.

10 ~~(v) (1) Commencing, July 1, 2022, the Department of Justice~~
11 ~~shall archive criminal records as provided in this subdivision.~~
12 ~~Notwithstanding any other law, an archived criminal record shall~~
13 ~~not be included in any state or federal summary criminal history~~
14 ~~furnished by the department, except as specified in paragraph (4).~~

15 ~~(2) The department shall archive all of the following:~~

16 ~~(A) Records of arrest that were granted relief under Section~~
17 ~~851.93 shall be archived and shall not appear on any reports of~~
18 ~~state or federal summary criminal history information if a period~~
19 ~~of at least two calendar years have passed since the date on which~~
20 ~~relief was granted under Section 851.93, during which the subject~~
21 ~~of the record was not convicted of a new criminal offense.~~

22 ~~(B) Records granted relief under Section 1203.425, or Sections~~
23 ~~1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49 shall be archived~~
24 ~~and shall not appear on any reports of state or federal summary~~
25 ~~criminal history information if a period of two years has elapsed~~
26 ~~since the date on which relief was granted under Section 1203.425,~~
27 ~~or Sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, during~~
28 ~~which the subject of the record was not convicted of a new criminal~~
29 ~~offense.~~

30 ~~(3) The department shall not archive records during a period in~~
31 ~~which the subject of the record is required to register pursuant to~~
32 ~~the Sex Offender Registration Act, has an active record for local,~~
33 ~~state, or federal supervision in the Supervised Release File, or,~~
34 ~~based on the information available in the department's record, it~~
35 ~~appears the person is currently serving a sentence for an offense~~
36 ~~or there is an indication of pending criminal charges.~~

37 ~~(4) Notwithstanding paragraphs (1) and (2), records in a~~
38 ~~subject's archived criminal history may be furnished with the~~
39 ~~subject's state summary criminal history information if compliance~~
40 ~~with applicable federal law requires that inclusion.~~

1 (v) (1) Commencing, July 1, 2022, notwithstanding any other
2 law, state or federal summary criminal history furnished by the
3 department pursuant to this section shall not include the following
4 information:

5 (A) Records of arrest that were granted relief under Section
6 851.93, if a period of at least two calendar years have passed since
7 the date on which relief was granted under Section 851.93, during
8 which the subject of the record was not convicted of a new felony
9 offense.

10 (B) Records granted relief under Section 1203.425, or Section
11 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.49, if a period of two
12 years has elapsed since the date on which relief was granted under
13 Section 1203.425, or Section 1203.4, 1203.4a, 1203.41, 1203.42,
14 or 1203.49, during which the subject of the record was not
15 convicted of a new felony offense.

16 (2) Paragraph (1) does not apply to any of the following:

17 (A) Any record in which the subject of the record is required to
18 register pursuant to the Sex Offender Registration Act, has an
19 active record for local, state, or federal supervision in the
20 Supervised Release File, or, based on the information available
21 in the department's record, it appears the person is currently
22 serving a sentence for an offense or there is an indication of
23 pending criminal charges.

24 (B) The furnishing of state summary criminal history information
25 pursuant to paragraphs (1) to (9), inclusive, of subdivision (b), for
26 purposes described in subdivisions (k) and (l).

27 (C) If dissemination of records identified by paragraph (1) is
28 required by federal law.

29 (D) The furnishing of state summary criminal history
30 information for the purposes related to the regulation of firearms.

31 (E) The furnishing of state summary criminal history information
32 pursuant to paragraph (12) of subdivision (b).

33 (F) Records of arrests or conviction for Section 220, 243.4, or
34 264.1, subdivision (a) of Section 273a, or, prior to January 1,
35 1994, paragraph (1) of Section 273a, Section 273ab, 273d, 273.5,
36 288, or 289, subdivision (c) of Section 290, or Section 368, if
37 furnished when responding to an application by an authorized
38 agency or organization pursuant to Section 1522 of the Health
39 and Safety Code or a statute that incorporates the criteria of any
40 of that section by reference.

1 SEC. 5. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

O