

**RESOLUTION 09-12-06**

**DIGEST**

Criminal History Information: Disclosure to Public Defenders

Amends Penal Code sections 11105 and 13300 to require increased disclosure of witness' criminal history to Public Defenders.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code sections 11105 and 13300 to require increased disclosure of witness' criminal history to Public Defenders. This resolution should be approved in principle because Public Defenders should have access to a witness' criminal offender record information, including misdemeanors and arrests for crimes involving moral turpitude.

State and federal law hold that the prosecution is required to disclose the felony convictions of all material prosecution witnesses if the record is "reasonably accessible." (*People v. Little* (1997) 59 Cal.App.4th 426.) It is not clear however, if present law requires the disclosure of misdemeanors and arrests for crimes involving moral turpitude. The need for information that might lead to the impeachment of a witness, especially when witness credibility is at issue, is paramount. It may be critical to a client's case for his or her criminal defense attorney to have all relevant information that may bear on a witness' credibility.

This information is readily available to the prosecution and should, in the interest of reciprocal discovery under Proposition 115, be made available to the defense. Prosecutors have access to this information not only for their witnesses but for the defense witnesses as well as the defendant. *Brady v. Maryland* (1963) 373 U.S. 83 requires the same result. *Brady* held that "... the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code sections 11105 and 13300, to read as follows:

- 1 §11105.
- 2 (a)(1) The Department of Justice shall maintain state summary criminal history
- 3 information.
- 4 (2) As used in this section:
- 5 (A) "State summary criminal history information" means the master record of

6 information compiled by the Attorney General pertaining to the identification and criminal  
7 history of any person, such as name, date of birth, physical description, fingerprints,  
8 photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions,  
9 and similar data about the person.

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

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

20 (1) The courts of the state.

21 (2) Peace officers of the state as defined in Section 830.1, subdivisions (a) and (e) of  
22 Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5,  
23 and subdivision (a) of Section 830.31.

24 (3) District attorneys of the state.

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

26 (5) Probation officers of the state.

27 (6) Parole officers of the state.

28 (7) A public defender or attorney of record when representing a person in  
29 proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section  
30 4852.08.

31 (8) A public defender or attorney of record when representing a person in a criminal  
32 case, or parole revocation or revocation extension proceeding, and if authorized access by  
33 statutory or decisional law, or when representing a person and the criminal history contains  
34 information about any felony or a misdemeanor conviction or an arrest for crimes involving  
35 moral turpitude by any witness in the action.

36 (9) Any agency, officer, or official of the state if the criminal history information is  
37 required to implement a statute or regulation that expressly refers to specific criminal  
38 conduct applicable to the subject person of the state summary criminal history information,  
39 and contains requirements or exclusions, or both, expressly based upon that specified  
40 criminal conduct. The agency, officer, or official of the state authorized by this paragraph to  
41 receive state summary criminal history information may also transmit fingerprint images and  
42 related information to the Department of Justice to be transmitted to the Federal Bureau of  
43 Investigation.

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

51 expressly based upon that specified criminal conduct. The city or county, or city and county,  
52 or district, or the officer or official thereof authorized by this paragraph may also transmit  
53 fingerprint images and related information to the Department of Justice to be transmitted to  
54 the Federal Bureau of Investigation.

55 (11) The subject of the state summary criminal history information under procedures  
56 established under Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part  
57 4.

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

63 (13) Health officers of a city, county, or city and county, or district, when in the  
64 performance of their official duties enforcing Section 120175 of the Health and Safety Code.

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

67 (15) Any humane society, or society for the prevention of cruelty to animals, for the  
68 specific purpose of complying with Section 14502 of the Corporations Code for the  
69 appointment of level 1 humane officers.

70 (16) Local child support agencies established by Section 17304 of the Family Code.  
71 When a local child support agency closes a support enforcement case containing summary  
72 criminal history information, the agency shall delete or purge from the file and destroy any  
73 documents or information concerning or arising from offenses for or of which the parent has  
74 been arrested, charged, or convicted, other than for offenses related to the parent's having  
75 failed to provide support for minor children, consistent with the requirements of Section  
76 17531 of the Family Code.

77 (17) County child welfare agency personnel who have been delegated the authority  
78 of county probation officers to access state summary criminal history information pursuant  
79 to Section 272 of the Welfare and Institutions Code for the purposes specified in Section  
80 16504.5 of the Welfare and Institutions Code. Information from criminal history records  
81 provided pursuant to this subdivision shall not be used for any purposes other than those  
82 specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an  
83 agency obtains records obtained both on the basis of name checks and fingerprint checks,  
84 final placement decisions shall be based only on the records obtained pursuant to the  
85 fingerprint check.

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

93 (1) Any public utility as defined in Section 216 of the Public Utilities Code that  
94 operates a nuclear energy facility when access is needed in order to assist in employing  
95 persons to work at the facility, provided that, if the Attorney General supplies the data, he or

96 she shall furnish a copy of the data to the person to whom the data relates.

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

98 (3) To a peace officer of another country.

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

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

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

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

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

113 (9)(A) Any public utility as defined in Section 216 of the Public Utilities Code, or  
114 any cable corporation as defined in subparagraph (B), if receipt of criminal history  
115 information is needed in order to assist in employing current or prospective employees,  
116 contract employees, or subcontract employees who, in the course of their employment may  
117 be seeking entrance to private residences or adjacent grounds. The information provided  
118 shall be limited to the record of convictions and any arrest for which the person is released  
119 on bail or on his or her own recognizance pending trial.

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

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

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

139 Nothing in this section shall be construed as imposing any duty upon public utilities  
140 or cable corporations to request state summary criminal history information on any current

141 or prospective employees.

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

145 (C) Requests for federal level criminal history information received by the  
146 Department of Justice from entities authorized pursuant to subparagraph (A) shall be  
147 forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level  
148 criminal history information received or compiled by the Department of Justice may then be  
149 disseminated to the entities referenced in subparagraph (A), as authorized by law.

150 (D)(i) Authority for a cable corporation to request state or federal level criminal  
151 history information under this paragraph shall commence July 1, 2005.

152 (ii) Authority for a public utility to request federal level criminal history information  
153 under this paragraph shall commence July 1, 2005.

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

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

169 (e) Whenever state summary criminal history information is furnished as the result of  
170 an application and is to be used for employment, licensing, or certification purposes, the  
171 Department of Justice may charge the person or entity making the request a fee that it  
172 determines to be sufficient to reimburse the department for the cost of furnishing the  
173 information. In addition, the Department of Justice may add a surcharge to the fee to fund  
174 maintenance and improvements to the systems from which the information is obtained.  
175 Notwithstanding any other law, any person or entity required to pay a fee to the department  
176 for information received under this section may charge the applicant a fee sufficient to  
177 reimburse the person or entity for this expense. All moneys received by the department  
178 pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588  
179 of the Education Code shall be deposited in a special account in the General Fund to be  
180 available for expenditure by the department to offset costs incurred pursuant to those  
181 sections and for maintenance and improvements to the systems from which the information  
182 is obtained upon appropriation by the Legislature.

183 (f) Whenever there is a conflict, the processing of criminal fingerprints and  
184 fingerprints of applicants for security guard or alarm agent registrations or firearms  
185 qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of

186 the Business and Professions Code shall take priority over the processing of other applicant  
187 fingerprints.

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

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

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

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

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

206 (2) Notwithstanding any other provision of law, whenever state summary criminal  
207 history information is furnished pursuant to paragraph (1), the Department of Justice shall  
208 disseminate the following information:

209 (A) Every conviction rendered against the applicant.

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

213 (C) Every arrest or detention, except for an arrest or detention resulting in an  
214 exoneration, provided, however, that where the records of the Department of Justice do not  
215 contain a disposition for the arrest, the Department of Justice first makes a genuine effort to  
216 determine the disposition of the arrest.

217 (D) Every successful diversion.

218 (l)(1) This subdivision shall apply whenever state or federal summary criminal  
219 history information is furnished by the Department of Justice as the result of an application  
220 by a criminal justice agency or organization as defined in Section 13101 of the Penal Code,  
221 and the information is to be used for criminal justice employment, licensing, or certification  
222 purposes.

223 (2) Notwithstanding any other provision of law, whenever state summary criminal  
224 history information is furnished pursuant to paragraph (1), the Department of Justice shall  
225 disseminate the following information:

226 (A) Every conviction rendered against the applicant.

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

230 (C) Every arrest for an offense for which the records of the Department of Justice do

231 not contain a disposition or did not result in a conviction, provided that the Department of  
232 Justice first makes a genuine effort to determine the disposition of the arrest. However,  
233 information concerning an arrest shall not be disclosed if the records of the Department of  
234 Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully  
235 completed a diversion or deferred entry of judgment program, or the arrest was deemed a  
236 detention.

237 (m)(1) This subdivision shall apply whenever state or federal summary criminal  
238 history information is furnished by the Department of Justice as the result of an application  
239 by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or  
240 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any  
241 of those sections or this subdivision by reference, and the information is to be used for  
242 employment, licensing, or certification purposes.

243 (2) Notwithstanding any other provision of law, whenever state summary criminal  
244 history information is furnished pursuant to paragraph (1), the Department of Justice shall  
245 disseminate the following information:

246 (A) Every conviction of an offense rendered against the applicant.

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

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

255 (3) Notwithstanding the requirements of the sections referenced in paragraph (1) of  
256 this subdivision, the Department of Justice shall not disseminate information about an arrest  
257 subsequently deemed a detention or an arrest that resulted in either the successful  
258 completion of a diversion program or exoneration.

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

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

265 (B) Section 11105.3 or 11105.4.

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

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

269 (2) With the exception of applications submitted by transportation companies  
270 authorized pursuant to Section 11105.3, and notwithstanding any other provision of law,  
271 whenever state summary criminal history information is furnished pursuant to paragraph (1),  
272 the Department of Justice shall disseminate the following information:

273 (A) Every conviction rendered against the applicant for a violation or attempted  
274 violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and  
275 Institutions Code. However, with the exception of those offenses for which registration is

276 required pursuant to Section 290, the Department of Justice shall not disseminate  
277 information pursuant to this subdivision unless the conviction occurred within 10 years of  
278 the date of the agency's request for information or the conviction is over 10 years old but the  
279 subject of the request was incarcerated within 10 years of the agency's request for  
280 information.

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

285 (o)(1) This subdivision shall apply whenever state or federal summary criminal  
286 history information is furnished by the Department of Justice as the result of an application  
287 by an authorized agency or organization pursuant to Section 261, 777.5, 4990, 6525, or  
288 14409.2, of the Financial Code, or any statute that incorporates the criteria of either of those  
289 sections or this subdivision by reference, and the information is to be used for employment,  
290 licensing, or certification purposes.

291 (2) Notwithstanding any other provision of law, whenever state summary criminal  
292 history information is furnished pursuant to paragraph (1), the Department of Justice shall  
293 disseminate the following information:

294 (A) Every conviction rendered against the applicant for a violation or attempted  
295 violation of any offense specified in Section 777.5 of the Financial Code.

296 (B) Every arrest for a violation or attempted violation of an offense specified in  
297 Section 777.5 of the Financial Code for which the applicant is presently awaiting trial,  
298 whether the applicant is incarcerated or has been released on bail or on his or her own  
299 recognizance pending trial.

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

306 (2) Notwithstanding any other provisions of law, whenever state summary criminal  
307 history information is furnished pursuant to paragraph (1), the Department of Justice shall  
308 disseminate the following information:

309 (A) Every conviction rendered against the applicant.

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

313 (q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m),  
314 (n), (o), and (p) may contract with the Department of Justice for subsequent arrest  
315 notification pursuant to Section 11105.2. This subdivision shall not supersede sections that  
316 mandate an agency, organization, or individual to contract with the Department of Justice  
317 for subsequent arrest notification pursuant to Section 11105.2.

318 (r) Nothing in this section shall be construed to mean that the Department of Justice  
319 shall cease compliance with any other statutory notification requirements.

320 (s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations

321 are to be followed in processing federal criminal history information.

322

323 13300.

324 (a) As used in this section:

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

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

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

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

341 (1) The courts of the state.

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

345 (3) District attorneys of the state.

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

347 (5) Probation officers of the state.

348 (6) Parole officers of the state.

349 (7) A public defender or attorney of record when representing a person in  
350 proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section  
351 4852.08.

352 (8) A public defender or attorney of record when representing a person in a criminal  
353 case and when authorized access by statutory or decisional law, or when representing a  
354 person and the criminal history contains information about any felony or a misdemeanor  
355 conviction or an arrest for crimes involving moral turpitude by any witness in the action.

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

361 (10) Any city, county, city and county, or district, or any officer or official thereof,  
362 when access is needed in order to assist the agency, officer, or official in fulfilling  
363 employment, certification, or licensing duties, and when the access is specifically authorized  
364 by the city council, board of supervisors, or governing board of the city, county, or district  
365 when the local summary criminal history information is required to implement a statute,

366 regulation, or ordinance that expressly refers to specific criminal conduct applicable to the  
367 subject person of the local summary criminal history information, and contains requirements  
368 or exclusions, or both, expressly based upon the specified criminal conduct.

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

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

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

377 (14) Local child support agencies established by Section 17304 of the Family Code.  
378 When a local child support agency closes a support enforcement case containing summary  
379 criminal history information, the agency shall delete or purge from the file and destroy any  
380 documents or information concerning or arising from offenses for or of which the parent has  
381 been arrested, charged, or convicted, other than for offenses related to the parents having  
382 failed to provide support for the minor children, consistent with Section 17531 of the Family  
383 Code.

384 (15) County child welfare agency personnel who have been delegated the authority  
385 of county probation officers to access state summary criminal information pursuant to  
386 Section 272 of the Welfare and Institutions Code for the purposes specified in Section  
387 16504.5 of the Welfare and Institutions Code.

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

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

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

398 (3) To a peace officer of another country.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

456 local summary criminal history information on any current or prospective concessionaire or  
457 their affiliates or associates.

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

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

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

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

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

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

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

490 (k) Any local criminal justice agency may release, within five years of the arrest,  
491 information concerning an arrest or detention of a peace officer or applicant for a position as  
492 a peace officer, as defined in Section 830, which did not result in conviction, and for which  
493 the person did not complete a postarrest diversion program or a deferred entry of judgment  
494 program, to a government agency employer of that peace officer or applicant.

495 (l) Any local criminal justice agency may release information concerning an arrest of  
496 a peace officer or applicant for a position as a peace officer, as defined in Section 830,  
497 which did not result in conviction but for which the person completed a postarrest diversion  
498 program or a deferred entry of judgment program, or information concerning a referral to  
499 and participation in any postarrest diversion program or a deferred entry of judgment  
500 program to a government agency employer of that peace officer or applicant.

501 (m) Notwithstanding subdivision (k) or (l), a local criminal justice agency shall not  
502 release information under the following circumstances:  
503 (1) Information concerning an arrest for which diversion or a deferred entry of  
504 judgment program has been ordered without attempting to determine whether diversion or a  
505 deferred entry of judgment program has been successfully completed.  
506 (2) Information concerning an arrest or detention followed by a dismissal or release  
507 without attempting to determine whether the individual was exonerated.  
508 (3) Information concerning an arrest without a disposition without attempting to  
509 determine whether diversion has been successfully completed or the individual was  
510 exonerated.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

#### STATEMENT OF REASONS

Existing Law: Requires disclosure of criminal offender record information (CORI) to Public Defenders when authorized by statutory or decisional law.

This Resolution: Makes it clear that Public Defenders have the right to receive CORI when representing a person in a criminal case.

The Problem: Prosecutors routinely obtain CORI for all witnesses, particularly defense witnesses, in order to impeach them during trial. Public Defenders are often denied the same CORI because the law authoring receipt of CORI by Public Defenders is less than clear particularly when the information relates to misdemeanor convictions and arrests for crimes of moral turpitude. Over-zealous prosecutors and judges refuse to give the defense access to CORI despite case law such as *People v. Little* (1997) 59 Cal. App. 4th 426, sometimes even refusing to disclose the defendant's own CORI. This amendment clarifies that Public Defenders are entitled to obtain CORI in order to fulfill the constitutional mandate to provide effective representation to criminal defendants.

#### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute, or rule.

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