

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 761 (Laird)  
Version: February 17, 2023  
Hearing Date: April 25, 2023  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Department of Justice: civil rights investigations

**DIGEST**

This bill authorizes the Attorney General (AG) to engage in investigations the AG deems necessary to determine whether any person has violated, or is about to violate, the civil rights laws of California or of the United States, or to aid in the enforcement of these laws, or in the prescribing of rules and forms by any other state agency under those laws. The bill grants the AG broad investigatory powers and authority in this regard. The bill also authorizes the AG to publish information concerning the AG's determination that a violation of the civil rights laws of California or of the United States has occurred.

**EXECUTIVE SUMMARY**

The bill grants expansive powers to the AG to investigate civil rights violations and any other law, including authoring the AG to have physical access to all records and other documents of various governmental entities and private businesses and organizations notwithstanding any other law, confidentiality provisions or agreements, or privileges that could otherwise be asserted under California, federal, or common law. The author and sponsor of the bill contend that these changes are needed to strengthen the AG's ability to investigate systemic civil rights violations by: providing timely access to information that could otherwise be delayed; authorizing the AG to investigate religious corporations for violations of state and federal civil rights laws; and allowing the AG to publicly comment and share information related to civil rights investigations with the goal of enhancing public transparency.

The bill is sponsored by the Attorney General Rob Bonta. There is no known support. The bill is opposed by the California District Attorneys Association and the Peace Officers Research Association of California.

## PROPOSED CHANGES TO THE LAW

Existing federal law provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. cons., amdt. 4.) This amendment is made applicable to the states via the Fourteenth Amendment of the U.S. Constitution.

Existing state law:

- 1) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. const. sec. 13, art. I.)
- 2) Specifies that the AG, subject to the powers and duties of the Governor, shall be the chief law officer of the state, and that it is the duty of the AG to see that the laws of the state are uniformly and adequately enforced.
  - a) The AG shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as the AG may seem advisable.
  - b) Whenever in the opinion of the AG any law of the state is not being adequately enforced in any county, it shall be the duty of the AG to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the AG shall have all the powers of a district attorney.
  - c) When required by the public interest or directed by the Governor, the AG shall assist any district attorney in the discharge of the duties of that office. (Cal. const. sec. 13, art. V.)
- 3) Establishes the Department of Justice (DOJ) and states it is under the control of the AG. (Gov. Code § 8000.)
- 4) Provides that no governmental authority, or agent of a governmental authority, or person acting on behalf of a governmental authority, shall engage in a pattern or practice of conduct by law enforcement officers that deprives any person of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States or by the Constitution or laws of California.

- a) Authorizes the AG to bring a civil action in the name of the people to obtain appropriate equitable and declaratory relief to eliminate such pattern or practice of conduct. (Civ. Code § 52.3.)
- 5) Provides that the AG has no powers with respect to any corporation incorporated or classified as a religious corporation under or pursuant to the Corporations Code, except as the Attorney General is empowered to act in the enforcement of the criminal laws of this state, and except as the AG is expressly empowered by statute. (Corp. Code § 9230.)
- 6) Authorizes the head of each department to make investigations and prosecute actions concerning:
    - a) All matters relating to the business activities and subjects under the jurisdiction of the department.
    - b) Violations of any law or rule or order of the department.
    - c) Such other matters as may be provided by law. (Gov. Code § 11180.)
- 7) In connection with any investigation or action authorized by this article, the department head may do any of the following:
    - a) Inspect and copy books, records, and other items described in (e).
    - b) Hear complaints.
    - c) Administer oaths.
    - d) Certify to all official acts.
    - e) Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing as defined by Section 250 of the Evidence Code, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.
    - f) Promulgate interrogatories pertinent or material to any inquiry, investigation, hearing, proceeding, or action.
    - g) Divulge information or evidence related to the investigation of unlawful activity discovered from interrogatory answers, papers, books, accounts, documents, and any other item described in (e), or testimony, to the AG or to any prosecuting attorney of this state, any other state, or the United States who has a responsibility for investigating the unlawful activity investigated or discovered, or to any governmental agency responsible for enforcing laws related to the unlawful activity investigated or discovered, if the AG, prosecuting attorney, or agency to which the information or evidence is divulged agrees to maintain the confidentiality of the information received to the extent required by this article.
    - h) Present information or evidence obtained or developed from the investigation of unlawful activity to a court or at an administrative hearing in connection with any action or proceeding. (Gov. Code § 11181.)

- 8) Prohibits an officer from divulging any information or evidence acquired by the officer from the interrogatory answers or subpoenaed private books, documents, papers, or other items described in (7)(e), above, of any person while acting or claiming to act under any authorization pursuant to these provisions, in respect to the confidential or private transactions, property, or business of any person.
  - a) An officer who divulges information or evidence in violation of this prohibition is guilty of a misdemeanor and disqualified from acting in any official capacity in the department. (Gov. Code § 11183.)
- 9) Specifies various procedures for issuing subpoenas related to investigations, and procedures for enforcing compliance with an issued subpoena. (Gov. Code § 11184-11188.)
- 10) Provides for various privileges under the Evidence Code that apply in proceedings, including, among others, lawyer-client privilege, confidential marital communications, and clergy penitent privilege. (Evid. Code § 900 et seq.)
  - a) Provides that any statute making rules of evidence inapplicable in particular proceedings, or limiting the applicability of rules of evidence in particular proceedings, do not make these provisions of the Evidence Code inapplicable to such proceedings.
  - b) Defines “proceeding” as any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given. (Evid. Code § 901.)
- 11) Provides that if an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response must provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.
  - a) If only part of an item or category of item in a demand for inspection, copying, testing, or sampling is objectionable, the response must contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.
  - b) If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response must do both of the following:
    - i. Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made.
    - ii. Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked must be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4

(commencing with Section 2018.010) of the Code of Civil Procedure, that claim must be expressly asserted. (Code of Civ. Proc. § 2031.240.)

This bill:

- 1) Authorizes the Attorney General, in their discretion, to do either or both of the following:
  - a) Engage in investigations that the AG deems necessary to determine whether any person has violated or is about to violate the civil rights laws of California or of the United States, or to aid in the enforcement of these laws, or in the prescribing of rules and forms by any other state agency under these laws.
  - b) Publish information concerning the AG's determination that a violation of the civil rights laws of California or of the United States has occurred.
- 2) Provides that the AG shall have physical access to, and may take possession of, or require the transfer or production of, all records, data, reports, and other written materials from any county, municipal, or other local law enforcement, educational, or other governmental agency, department, or other entity, or any private company, organization or business entity, pertaining to the subject matter of the investigation notwithstanding any other law, confidentiality provisions or agreements, or privileges that could otherwise be asserted under California, federal, or common law while engaging in investigations related to the violation of civil rights laws or any other state or federal law.
- 3) Provides that the investigative materials in the possession of the AG pursuant to these provisions are not obtainable by the public pursuant to the California Public Records Act and are to be held confidential to support the investigation, except as required, at the discretion of the AG, to be filed with any court of competent jurisdiction for any relevant purpose.
- 4) Authorizes the AG to subpoena witnesses, compel their attendance, administer oaths and affirmations, take evidence, conduct inspections of physical locations, including interviews of persons at said locations, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the AG deems relevant or material to the inquiry notwithstanding any other law, confidentiality provisions or agreement, or privileges that could otherwise be asserted under California, federal, or common law while engaging in investigations related to the violation of civil rights laws.
- 5) Requires a court, in case of a refusal to obey a subpoena properly issued, to issue to the subject of the subpoena an order requiring them, or in the case of an agency or entity, their principal or custodian of records, to appear before the AG, or the officer designated by the AG, and produce the documentary evidence or testimony so

ordered. Failure to obey the order of the court may be punished by the court as contempt.

- 6) Provides that no person or entity is excused from attending and testifying or from producing any document or record before the AG, or in obedience to the subpoena of the AG or their designees, or in any proceeding instituted by the AG, on the ground that the testimony or evidence, documentary or otherwise, required of them may tend to incriminate them or subject them to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which they are compelled, after validly claiming their privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that an individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
- 7) Authorizes the AG to initiate an action or proceeding, pursuant to the above described provisions, to conduct investigations and obtain judicial relief as necessary to address the abuse of children or to otherwise investigate civil rights violations by religious corporations.
- 8) Authorizes the AG to initiate an action or proceeding, pursuant to the above provisions, to conduct investigations and obtain judicial relief as necessary to address the abuse of children, and to otherwise enforce the Child Abuse and Neglect Reporting Act.
- 9) Requires any person or agency in possession of a report required to be submitted by a mandated reporter under Section 11166 of the Penal Code, or in possession of documentation, recordings, data, reports, or other materials related to any investigation of substantiated child abuse or neglect to the records to the Attorney General within 45 days of a request in any investigation or to carry out investigations regarding civil rights violations.
- 10) Authorizes a juvenile case file to be inspected by the DOJ to carry out investigations regarding civil rights violations at the discretion of the Attorney General.
- 11) Authorizes certain information and records related to the Lanterman-Petris-Short Act, the voluntary admissions to mental hospitals and institutions, and county psychiatric hospitals to be accessible by the DOJ to carry out investigations regarding civil rights violations at the discretion of the Attorney General.

## COMMENTS

### 1. Stated need for the bill

The author writes:

The Attorney General has the responsibility to conduct investigations of public entities and companies that have potentially engaged in systemic civil rights violations. These can include discrimination on the basis of sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, or any other protected classifications. [...]

However, certain aspects of current law can hinder the Attorney General's ability to adequately and expeditiously investigate systemic civil rights violations. The Attorney General often faces objections and delay tactics from the entities he investigates when subpoenaing necessary information, sometimes delaying investigations by a year or more. More timely access to this information will assist with the efficient resolution of civil rights, children's justice, and law enforcement investigations. Additionally, existing law does not allow the Attorney General to conduct systemic civil investigations into religious corporations for systemic child abuse. Lastly, current law restricts the Attorney General from keeping the public updated on pending civil rights investigations, which can take years to be resolved. These civil rights investigations can be of urgent public importance, and SB 761 would allow the Attorney General to share procedural updates and findings with the public as to whether a civil rights violation has occurred.

The sponsor of the bill, Attorney General Rob Bonta, writes:

The California Department of Justice, under the leadership of the Attorney General Rob Bonta, is responsible for and committed to the strong and vigorous enforcement of federal and state civil rights laws, which prohibit discrimination by both local governmental entities and business establishments. These civil rights laws prohibit discrimination based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status, or any other protected classifications. [...]

SB 761 would allow the Attorney General more timely access to critical information to assist with the efficient resolution of civil rights, children's justice, and law enforcement investigations. While the Attorney General currently has this authority, the process to obtain these materials, which involves court orders or other statutory mechanisms, is unnecessarily time consuming and contributes

to the delays. When investigating child abuse, law enforcement practices, and other civil rights violations, frequent unnecessary delays accessing information can hinder the investigation. These delays can be lengthy, prolonging the resolution of matters sometimes by more than a year, which often hinders critical reforms and further harms the public by a delay in justice. [...]

SB 761 would offer public transparency into the Attorney General's civil rights investigations by allowing the Attorney General to share with the public important information and findings regarding pending investigations and whether a civil rights violation has occurred. Existing laws on confidentiality limits the ability of the Attorney General to communicate with the public regarding aspects of a pending investigation. Because some civil rights cases require lengthy, extensive investigations, the public may be left in the dark for many years. [...]

SB 761 would also allow the Attorney General to civilly investigate religious entities for child abuse-related issues. Under current law, religious entities are shielded from being investigated civilly by the Attorney General, even where the investigation is designed to redress systemic lapses – or affirmative actions – that resulted in the abuse of children. (footnotes omitted)

2. This bill constitutes an immense expansion of governmental investigatory powers

The author and sponsor of the bill posit that current statutory protections and procedures are delaying the ability of the AG to obtain information for which a subject of the investigation has asserted privileges or otherwise refused to produce requested information. They state that these delays can sometime last more than a year, and that they generally always receive the information they are seeking. In order to speed up their investigations, they propose several changes to their existing authority under the Government Code that pertains to investigations by departments (Gov. Code § 11180 et seq.; *hereafter* 11180 authority). Investigating civil rights violations is clearly important and necessary work to ensure the rights of the public are protected. However, providing expansive investigatory authority and eviscerating existing protections under the law in order to “speed up investigations” may have unintended consequences. No matter how noble the cause, it is important for the Legislature to examine all of the public policy ramifications of expanding governmental power with an eye not only for the present but the future.

- a. *The bill provides a separate governing statute from existing 11180 authority for the investigations of civil rights laws*

The bill would state that the AG, in their discretion, may engage in investigations deemed necessary to determine whether any person has violated or is about to violate the civil rights laws of California or of the United States, to aid in the enforcement of



these laws, and to aid in the prescribing of rules and forms by any other state agency under these laws. Under the bill, civil rights laws is not defined so it is impossible to understand the full scope of laws these broad powers and authorizations would apply to. Under existing law, the AG has no powers with respect to any corporation incorporated or classified as a religious corporation under the Corporations Code, with limited exceptions such as investigating violations of criminal laws by religious corporations. The author and sponsor of the bill state that current law shields religious entities “from being investigated civilly by the Attorney General, even where the investigation is designed to redress systemic lapses – or affirmative actions – that resulted in the abuse of children.” The bill addresses this by granting the AG specific authority to initiate an action or proceeding pursuant to the powers described below to conduct investigations and obtain judicial relief as necessary to address the abuse of children or to otherwise investigate civil rights violations by religious corporations.

- b. The bill seems to grants the AG unprecedented authority to have physical access to, and take possession of, various documents of not only governmental entities but also private companies, organizations, or entities.*

The bill states that the AG “shall have physical access to, and may take possession of, or require the transfer or production of, all records, data, reports, and other written materials from any county, municipal, or other local law enforcement, educational, or other governmental agency, department, or other entity, or any private company, organization or business entity, pertaining to the subject matter of the investigation” while engaging in any civil rights investigation or any other state or federal law. This language appears to provide the AG physical access to, and authorizes possession of, documents and records of not only governmental entities but also any private organization or business entity without seeking consent, obtaining a subpoena, or obtaining judicial authorization. The bill in print would apply these powers to the enforcement of any law, which raises numerous constitutional issues; however, the author and sponsor have indicated their intent is for it to only apply to civil rights investigations. Even with this narrowing of the bill’s provisions, the powers being granted to the AG to have physical access to the private papers and documents of private entities and businesses would be unprecedented.

This provision of the bill unquestionably implicates the Fourth Amendment of the U.S. Constitution and Section 13 of Article I of the California Constitution which provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. Existing case law states “[o]f course, department heads cannot compel the production of evidence in disregard of the privilege against self- incrimination or the constitutional provisions prohibiting unreasonable searches and seizures.” (*Brovelli v. Superior Court of Los Angeles County* (1961) 56 Cal.2d 524.) Nowhere else under existing law is the AG granted such broad authority, and under existing 11180 authority this information can only be obtained through consent or via a subpoena.

*c. The bill prohibits the evidentiary privileges under existing law from being asserted in civil rights investigations*

A further concerning aspect of the bill is that the above power of the AG can be exercised notwithstanding any other law, confidentiality provisions or agreements, or privileges that could otherwise be asserted under California, federal, or common law. In essence, the bill would prohibit a person or entity from asserting any existing evidentiary privilege authorized by any law in a civil rights investigation by the AG. Existing law provides for various privileges under the Evidence Code that apply in any proceeding, which is defined to include an investigation. An evidentiary privilege permits an otherwise competent witness to refuse to testify and/or prevent another from testifying. Privileges are policy exclusions, unrelated to the reliability of the information involved, which are granted because it is considered more important to keep that information confidential than it is to require disclosure of all the information relevant to the issues in a pending proceeding. One privilege of note that is most often asserted in investigations by the AG into civil rights violations is the lawyer-client privilege. (Evid. Code § 950 et seq.) The lawyer-client privilege is a vital attribute of the relationship between a lawyer and a lawyer's clients whose purpose is to permit clients to obtain confidential legal advice and to encourage candor between lawyers and clients. This facilitates compliance with the law by allowing clients to seek guidance on their legal obligations without fear that their communications with counsel will someday be used against them. This bill would summarily do away with all privileges, whether state, federal, or common law, in an investigation by the AG into civil rights violations. Under these provisions of the bill the AG could compel an attorney to provide testimony against their client.

*d. The bill's provisions implicate the privilege against self-incrimination*

The bill also provides that no person or entity is excused from attending and testifying or from producing any document or record before the AG, or in obedience to the subpoena of the AG or their designees, or in any proceeding instituted by the AG, on the ground that the testimony or evidence, documentary or otherwise, required of them may tend to incriminate them or subject them to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which they are compelled, after validly claiming their privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that an individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying. Essentially, this would prohibit someone from refusing to testify or provide evidence to the AG because they asserted the privilege against self-incrimination. However, the bill specifically provides that any evidence provided could not be used against that person if they validly claim the privilege against self-incrimination. This provision effectively

provides a person immunity from prosecution for providing self-incriminating testimony.

- e. Bill grants the AG authority to release information that the AG is prohibited from releasing under existing law*

Under existing 11180 authority, an officer is prohibited from divulging any information or evidence acquired from the interrogatory answers or subpoenaed private books, documents, papers, or other items of any person while acting or claiming to act under 11180 authority with respect to the confidential or private transactions, property or business of any person. A violation of this prohibition is punishable as a misdemeanor. The author and sponsor of the bill note that some civil rights cases require lengthy, extensive investigations, which can leave the public and victims in the dark for many years on the status of the investigation. They argue that, in order to provide transparency to the public, more information regarding investigations brought in the public interest should be able to be released. The bill specifically authorizes the AG to publish information concerning the AG's determination that a violation of the civil rights laws of California or of the United States has occurred. This grant of authority is very broad especially when compared to the strong prohibition on the release of any information under 11180 authority. The author may wish to provide some guardrails around what information is being authorized to be released.

- f. Grants the AG and the DOJ access to information and records they currently are not authorized to access under existing law*

Lastly, the bill authorizes the AG to initiate an action or proceeding pursuant to the above powers to conduct investigations and obtain judicial relief as necessary to address the abuse of children, and to otherwise enforce the Child Abuse and Neglect Reporting Act. It also grants the DOJ access to inspect a juvenile case file and certain information and records related to the Lanterman-Petris-Short Act, voluntary admissions to mental hospitals and institutions, and county psychiatric hospitals in order to carry out investigations regarding civil rights violations.

### 3. Proposed author amendments

- a. Proposed author amendments to address issues raised above*

The author has proposed amendments to address the issues raised above. These include:

- Striking language that applies certain authority under the bill to the enforcement of any law.

- Removing the language that notwithstanding any other law, confidentiality provisions or agreements, or privileges that could otherwise be asserted under California, federal, or common law.
- Making it clear that the AG can only have access to or take possession of documents if consent is granted or via a subpoena.
- Providing language that clarifies the AG can publish findings, data, or preliminary conclusions concerning their determination that a violation of the civil rights laws have occurred and that these publications cannot include any personally identifying information.
- Removing language that would authorize a court to order a person who refused to grant physical access to or transfer or take possession of or make production of materials specified in paragraph (1) of subdivision (b) of added Section 12535 of the Government Code.
- Clarifying the language that grants the authority to the AG to investigate a religious corporation to make it clear that the AG can investigate civil rights issues, including, but not limited to, the abuse of children.
- Clarifying that the grant of authority to investigate violations of civil rights laws as the AG deems necessary applies not only to a person but also an entity.
- Specifying that the provisions of the bill related to the authority to investigate civil rights violations does not grant the AG any fewer rights than it has under existing law, including 11180 authority.

*b. Additional proposed author amendments*

In light of removing the language that notwithstanding any privilege, the author has proposed additional amendments to add a new subdivision (d) to added Section 12535 of the Government Code that reads:

*(d) To the extent the subject of an investigation under this section has a good faith belief that a document, or information in a document, is subject to, and may be withheld on the basis of, the attorney-client privilege or attorney work-product doctrine, the subject of the investigation shall, within 60 days of the Attorney General's request for that information unless an extension has been granted, provide a detailed privilege log. When a document contains both information protected by the attorney-client privilege or the attorney work-product doctrine and information not protected, that document shall be produced in a redacted form at the time the subject of the investigation provides the privilege log.*

Under the Civil Discovery Act (Code of Civ. Proc. § 2016.010 et seq.), if an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response must provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log. (Code of Civ. Proce. § 2031.240(b).) If only part of an item or category of item in a demand for inspection, copying, testing, or sampling is objectionable, the response must contain a statement of compliance, or a representation of inability to comply with respect to the

remainder of that item or category. (*Id.* subd. (a).) If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response must do both of the following: (1) identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made; and (2) set forth clearly the extent of, and the specific ground for, the objection. (*Id.* subd. (c).) If an objection is based on a claim of privilege, the particular privilege invoked must be stated, and, if an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010) of the Code of Civil Procedure, that claim must be expressly asserted. (*Ibid.*)

The court has held that “the precise information required for an adequate privilege log will vary from case to case based on the privileges asserted and the underlying circumstances. In general, however, a privilege log typically should provide the identity and capacity of all individuals who authored, sent, or received each allegedly privileged document, the document's date, a brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and the precise privilege or protection asserted.” (*Catalina Yacht Club v. Superior Court of Orange County* (2015) 242 Cal.App.4<sup>th</sup> 1116, 11130.) The above proposed amendment would codify the existing procedure under the Civil Discovery Act related to privilege logs under the provisions of the bill related to investigations of civil rights laws by the AG.

The author has also proposed language that provides if a court finds that the refusal to obey a subpoena properly issued, or the withholding of documents and information by a subject of an investigation was frivolous or a theory advanced in bad faith, the court shall award the Attorney General the reasonable attorney's fees and costs incurred in bringing the application.

A mock-up of the proposed author amendments in context is attached to the analysis.<sup>1</sup> The proposed amendments also include several nonsubstantive changes.

#### 4. Statements in opposition

The Peace Officers' Research Association of California writes in opposition stating:

PORAC feels this measure is over-broad and would give the Attorney General absolute authority to investigate any case involving officer use of force. If the Attorney General “in their discretion” feels there may have been a civil rights violation, even if the officer used proper force and within agency policy. The law enforcement agencies and the county District Attorney offices

---

<sup>1</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

already do full investigations on any officer involved force with the District Attorney looking at all possible criminal actions by the officer, including criminal rights violations. If the intent of this measure is to allow the Attorney General to investigate possible civil rights violations other than officer use of force, PORAC will ask for clarifying amendments stating its intent.

**SUPPORT**

Attorney General, Rob Bonta (sponsor)

**OPPOSITION**

California District Attorneys Association  
Peace Officers Research Association of California

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

\*\*\*\*\*

## MOCK-UP OF PROPOSED AUTHOR AMENDMENTS

*The people of the state of California do enact as follows:*

**SECTION 1.** Section 9230 of the Corporations Code is amended to read:

**9230.** (a) Except as the Attorney General is empowered to act in the enforcement of the criminal laws of this state, and except as the Attorney General is expressly empowered by subdivisions (b), (c), (d), and (e), the Attorney General shall have no powers with respect to any corporation incorporated or classified as a religious corporation under or pursuant to this code.

(b) The Attorney General shall have authority to institute an action or proceeding under Section 803 of the Code of Civil Procedure, to obtain judicial determination that a corporation is not properly qualified or classified as a religious corporation under the provisions of this part.

(c) The Attorney General shall have the authority (1) expressly granted with respect to any subject or matter covered by Sections 9660 to 9690, inclusive; (2) to initiate criminal procedures to prosecute violations of the criminal laws, and upon conviction seek restitution as punishment; and (3) to represent as legal counsel any other agency or department of the State of California expressly empowered to act with respect to the status of religious corporations, or expressly empowered to regulate activities in which religious corporations, as well as other entities, may engage.

(d) Where property has been solicited and received from the general public, based on a representation that it would be used for a specific charitable purpose other than general support of the corporation's activities, and has been used in a manner contrary to that specific charitable purpose for which the property was solicited, the Attorney General may institute an action to enforce the specific charitable purpose for which the property was solicited; provided (1) that before bringing such action the Attorney General shall notify the corporation that an action will be brought unless the corporation takes immediate steps to correct the improper diversion of funds, and (2) that in the event it becomes impractical or impossible for the corporation to devote the property to the specified charitable purpose, or that the directors or members of the corporation in good faith expressly conclude and record in writing that the stated purpose for which the property was contributed is no longer in accord with the policies of the corporation, then the directors or members of the corporation may approve or ratify in good faith the use of such property for the general purposes of the corporation rather than for the specific purpose for which it was contributed.

As used in this section, "solicited from the general public" means solicitations directed to the general public, or to any individual or group of individuals who are not directly

affiliated with the soliciting organization and includes, but is not limited to, instances where property has been solicited on an individual basis, such as door to door, direct mail, face to face, or similar solicitations, as well as solicitations on a more general level to the general public, or a portion thereof, such as through the media, including newspapers, television, radio, or similar solicitations.

(e) The Attorney General may initiate an action or proceeding under Section 12535 of the Government Code, to conduct investigations and obtain judicial relief as necessary to address *civil rights issues including, but not limited to*, the abuse of children, and to otherwise enforce Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code.

(f) Nothing in this section shall be construed to affect any individual rights of action ~~which~~ *that* were accorded under law in existence prior to the enactment of Chapter 1324 of the Statutes of 1980.

As used in this section, "individual rights of action" include only rights enforceable by private individuals and do not include any right of action of a public officer in an official capacity regardless of whether the officer brings the action on behalf of a private individual.

(g) Nothing in this section shall be construed to require express statutory authorization by the California Legislature of any otherwise lawful and duly authorized action by any agency of local government.

**SEC. 2.** Section 12535 is added to the Government Code, to read:

**12535.** (a) The Attorney General, in their discretion, may do either or both of the following:

(1) Engage in investigations that the Attorney General deems necessary to determine whether any person *or entity* has violated or is about to violate the civil rights laws of California or of the United States or to aid in the enforcement of these laws or in the prescribing of rules and forms by any other state agency under these laws.

(2) Publish ~~information~~ *findings, data, or preliminary conclusions* concerning their determination that a violation of the civil rights laws of California or of the United States has ~~occurred~~ *occurred, provided that those publications shall not include personally identifying information*.

(b) (1) While engaging in any investigation authorized by subdivision (a) or any other state or federal *civil rights* law, the Attorney General shall have physical access to, and may take possession of, or require the transfer or production of, all records, data, reports, and other written materials from any county, municipal, or other local law



enforcement, educational, or other governmental agency, department, or other entity, or any private company, organization or business entity, pertaining to the subject matter of the investigation ~~notwithstanding any other law, confidentiality provisions or agreements, or privileges that could otherwise be asserted under California, federal, or common law.~~ *with consent or through a subpoena.*

(2) The investigative materials in the possession of the Attorney General pursuant to this section shall not be obtainable by the public pursuant to the Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be held confidential by the Attorney General, their employees, and any agents or experts contracted with the Department of Justice to support the investigation, except as required, at the discretion of the Attorney General, to be filed with any court of competent jurisdiction for any relevant purpose.

(3) At the conclusion of the investigation, or of the enforcement of any judgment or agreement concluding the investigation, subject to the discretion of the Attorney General, materials covered by this provision may be destroyed, returned to the agency or entity ~~which~~ *that* provided it, or securely and confidentially retained by the Attorney General.

(c) For the purpose of any investigation or proceeding under the civil rights laws of California or of the United States, the Attorney General, or their designee, may ~~subpoena~~ *do any of the following:*

(1) *interview* witnesses, compel their ~~attendance,~~ *attendance at oral examinations, and* administer oaths and affirmations,

(2) take evidence, conduct inspections of physical locations, including interviews of persons at said locations,

(3) *promulgate interrogatories,* and

(4) require the *inspection, copying, or* production of books, papers, correspondence, memoranda, agreements, or other documents, *data,* or ~~records that the Attorney General deems relevant or material to the inquiry notwithstanding any other law, confidentiality provisions or agreement, or privileges that could otherwise be asserted under California, federal, or common law.~~ *records, tangible things, or any writing as defined by Section 250 of the Evidence Code. The Attorney General may issue a subpoena to obtain any of the materials above.*

(d) *To the extent the subject of an investigation under this section has a good faith belief that a document, or information in a document, is subject to, and may be withheld on the basis of, the attorney-client privilege or attorney work-product doctrine, the subject of the investigation shall, within 60 days of the Attorney General's request for that information unless an extension has been granted, provide a detailed privilege log. When a document contains both information protected by the attorney-client privilege or the attorney work-product doctrine and information not protected, that document shall be produced in a redacted form at the time the subject of the investigation provides the privilege log.*

~~(d)~~ (e) In case of a refusal to obey a subpoena properly issued pursuant to this section, *or the improper withholding of documents or information on a claim of attorney-client privilege or application of the attorney work-product doctrine*, the superior court, upon application by the Attorney General, shall issue to the subject of the subpoena an order requiring them, or in the case of an agency or entity, their principal or custodian of records, to appear before the Attorney General, or the officer designated by the Attorney General, and produce the documentary evidence or testimony so ~~ordered~~ *ordered, or to require the physical access, transfer or production of materials sought*. Failure to obey the order of the court may be punished by the court as ~~a~~ contempt. *If a court finds that the refusal to obey a subpoena properly issued, or the withholding of documents and information by a subject of an investigation was frivolous or a theory advanced in bad faith, the court shall award the Attorney General the reasonable attorney's fees and costs incurred in bringing the application.*

~~(e)~~ (f) No person or entity is excused from attending and testifying or from producing any document or record before the Attorney General, or in obedience to the subpoena of the Attorney General or their designees, or in any proceeding instituted by the Attorney General, on the ground that the testimony or evidence, documentary or otherwise, required of them may tend to incriminate them or subject them to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which they are compelled, after validly claiming their privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that an individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

*(g) Nothing in this section shall be construed to provide the Attorney General with fewer rights or remedies than those which exist under current law, including but not limited to investigations conducted pursuant to Article 2 (commencing with Section 11180) of Part 1 of Division 3 of Title 2 of the Government Code.*

**SEC. 3.** Section 11169 of the Penal Code is amended to read:

**11169.** (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is determined to be substantiated, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is substantiated, as defined in Section 11165.12. If a report has previously been filed ~~which~~ *that* subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.

(b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.

(c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that they have been reported to the Child Abuse Central Index (CACI). The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.

(d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested their inclusion in the CACI to challenge their listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court's jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

(f) Any person listed in the CACI who has reached 100 years of age shall have their listing removed from the CACI.

(g) Any person listed in the CACI as of January 1, 2013, who was listed prior to reaching 18 years of age, and who is listed once in CACI with no subsequent listings, shall be removed from the CACI 10 years from the date of the incident resulting in the CACI listing.

(h) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

(i) Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170. Nothing in this section precludes an agency from retaining the reports for a longer period of time if required by law.

(j) The immunity provisions of Section 11172 shall not apply to the submission of a report by an agency pursuant to this section. However, nothing in this section shall be construed to alter or diminish any other immunity provisions of state or federal law.

(k) Any person or agency in possession of a report set forth in Section 11166, or in possession of documentation, recordings, data, reports, or other materials related to any investigation under this section, shall provide the records to the Attorney General within 45 days of a request in any investigation or proceeding under Section 12535 of the Government Code.

**SEC. 4.** Section 827 of the Welfare and Institutions Code is amended to read:

**827.** (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) The minor's parent or guardian.

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.

(G) The superintendent or designee of the school district where the minor is enrolled or attending school.

(H) Members of the child protective agencies as described in Section 11165.9 of the Penal Code.

(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000) of this code and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).

(J) (i) Authorized staff who are employed by, or authorized staff of entities who are licensed by, the State Department of Social Services, as necessary to the performance of their duties related to resource family approval, and authorized staff who are employed by the State Department of Social Services as necessary to inspect, approve, or license, and monitor or investigate community care facilities or resource families, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate, and to ascertain compliance with the rules and regulations to which the facilities are subject.

(ii) The confidential information shall remain confidential except for purposes of inspection, approval or licensing, or monitoring or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code and Article 2 (commencing with Section 16519.5) of Chapter 5 of Part 4 of Division 9. The confidential information may also be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services determines that no further action will be taken in the matter. Except as otherwise provided in this subdivision, confidential information shall not contain the name of the minor.

(K) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(L) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case

to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing the minor's counsel.

(M) When acting within the scope of investigative duties of an active case, a statutorily authorized or court-appointed investigator who is conducting an investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of the investigator's duties in that case.

(N) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(O) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(P) The Department of Justice, to carry out its duties pursuant to Sections 290.008 and 290.08 of the Penal Code as the repository for sex offender registration and notification in California, or to carry out investigations regarding civil rights violations at the discretion of the Attorney General under Section 12535 of the Government Code.

(Q) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(R) A probation officer who is preparing a report pursuant to Section 1178 on behalf of a person who was in the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Justice and who has petitioned the Board of Juvenile Hearings for an honorable discharge.

(S) (i) The attorneys in an administrative hearing involving the minor or nonminor only as necessary to meet the requirements of Sections 10952 and 10952.5.

(ii) The confidential information shall remain confidential for purposes of the administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. The confidential information shall be sealed after the conclusion of the administrative hearing, and shall not subsequently be released except in accordance with this subdivision.

(T) Personnel of the State Department of Social Services, to carry out the duties of the department pursuant to paragraph (1) of subdivision (c) of Section 9100 of the Family Code or paragraph (3) of subdivision (e) of Section 366.26.

(2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or that could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(B) This paragraph represents a presumption in favor of the release of documents when a child is deceased unless the statutory reasons for confidentiality are shown to exist.

(C) If a child whose records are sought has died, and documents are sought pursuant to this paragraph, no weighing or balancing of the interests of those other than a child is permitted.

(D) A petition filed under this paragraph shall be served on interested parties by the petitioner, if the petitioner is in possession of their identity and address, and on the custodian of records. Upon receiving a petition, the custodian of records shall serve a copy of the request upon all interested parties that have not been served by the petitioner or on the interested parties served by the petitioner if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.

(E) The custodian of records shall serve the petition within 10 calendar days of receipt. If an interested party, including the custodian of records, objects to the petition, the party shall file and serve the objection on the petitioning party no later than 15 calendar days after service of the petition.

(F) The petitioning party shall have 10 calendar days to file a reply. The juvenile court shall set the matter for hearing no more than 60 calendar days from the date the petition is served on the custodian of records. The court shall render its decision within 30 days of the hearing. The matter shall be decided solely upon the basis of the petition and supporting exhibits and declarations, if any, the objection and any supporting exhibits or declarations, if any, and the reply and any supporting declarations or exhibits thereto, and argument at hearing. The court may, solely upon its own motion, order the appearance of witnesses. If an objection is not filed to the petition, the court shall review

the petition and issue its decision within 10 calendar days of the final day for filing the objection. An order of the court shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (P), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph does not limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of, and an opportunity to file an objection to, the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to a person or agency, other than a person or agency authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with, and in the course of, a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), (I), (J), (P), (S), and (T) of paragraph (1) may also receive copies of the case file. For authorized staff of entities who are licensed by the State Department of Social Services, the confidential information shall be obtained through a child protective agency, as defined in subparagraph (H) of paragraph (1). In these circumstances, the requirements of paragraph (4) shall continue to apply to the information received.

(6) An individual other than a person described in subparagraphs (A) to (P), inclusive, of paragraph (1) who files a notice of appeal or petition for writ challenging a juvenile



court order, or who is a respondent in that appeal or real party in interest in that writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in a juvenile case file to which the individual was previously granted access by the juvenile court pursuant to subparagraph (Q) of paragraph (1), including any records or portions thereof that are made a part of the appellate record. The requirements of paragraph (3) shall continue to apply to any other record, or a portion thereof, in the juvenile case file or made a part of the appellate record. The requirements of paragraph (4) shall continue to apply to files received pursuant to this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed a felony or misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(B) Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, the juvenile's parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

(C) An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches 18 years of age, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or the minor's parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of the requested review and no later than 30 days after the request for the review was received, the principal or a designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

(2) Except as provided in paragraph (2) of subdivision (b), liability shall not attach to a person who transmits or fails to transmit notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making the probation officer's report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

(f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.

(g) Any portion of a case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786, or that is covered by a record sealing requirement pursuant to Section 786.5 or 827.95, may not be inspected, except as specified by those sections.

**SEC. 5.** Section 5328.15 of the Welfare and Institutions Code is amended to read:

**5328.15.** All information and records obtained in the course of providing services under Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed, however, notwithstanding any other law, as follows:

(a) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Public Health, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) of, and Chapter 3 (commencing with Section 1500) of, Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Public Health or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names ~~which~~ *that* are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Public Health or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Public Health or the State Department of Social Services shall not contain the name of the patient.

(b) To any board ~~which~~ *that* licenses and certifies professionals in the fields of mental health pursuant to state law, when the Director of State Hospitals has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of that board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the patient.

(c) To a protection and advocacy agency established pursuant to Section 4901, to the extent that the information is incorporated within any of the following:

(1) An unredacted facility evaluation report form or an unredacted complaint investigation report form of the State Department of Social Services. The information shall remain confidential and subject to the confidentiality requirements of subdivision (f) of Section 4903.

(2) An unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency of the State Department of Public Health, prepared by authorized licensing personnel or authorized representatives as described in subdivision (a). The information shall remain confidential and subject to the confidentiality requirements of subdivision (f) of Section 4903.

(d) To the Department of Justice, to carry out investigations regarding civil rights violations at the discretion of the Attorney General under Section 12535 of the Government Code.

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

**SEC. 7.** The Legislature finds and declares that Section 2 of this act, which adds Section 12535 ~~of~~ *to* the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This section balances the public's right to access records of the Department of Justice with the need to protect the privacy of individuals who are the subject of a civil rights investigation.